

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

JERRY LEE BARKER,)

PLAINTIFF)

VS.)

NO. 81-C-134-B

RUSSELL RAY STEPHENS &)
MOORE PAPER COMPANY, INC.,)

DEFENDANTS.)
)

FILED

MAY 29 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

Comes now the Plaintiff and moves to dismiss the above styled cause of action without prejudice to refiling in the proper forum.

The Court does hereby find, ORDER, ADJUDGE AND DECREE that the above styled action be dismissed without prejudice to refile in the proper forum.

Done in open Court this 29th day of May, 1981.

S/ James O. Elliman
UNITED STATES DISTRICT JUDGE
FOR THE NORTHERN DISTRICT OF
OKLAHOMA

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of May, 1981, I mailed a true and correct copy of the above and foregoing Order to:
Mr. Graydon Dean Luthey, Jr, Suite 400, 201 West 5th Street, Tulsa, Oklahoma 74103, Attorney for Defendants.

FRANK GREER

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JOHN RUSSELL PENN, No. 102391)

Plaintiff,)

vs.)

No. 80-C-596-B

EUGENE C. CANTRELL, MIAMI)

NATIONAL BANK, THOMAS H. MAY,)

DISTRICT ATTORNEY OF OTTAWA)

COUNTY, OKLAHOMA, MORLAND T.)

BARTON, ASSISTANT DISTRICT)

ATTORNEY OF OTTAWA COUNTY,)

OKLAHOMA, FRED H. DeMIER,)

ASSISTANT DISTRICT ATTORNEY)

OF OTTAWA COUNTY, OKLAHOMA,)

Defendants.)

FILED

MAY 29 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

This matter comes before the Court on defendants' Motion to Dismiss for failure to state a claim upon which relief can be granted. Plaintiff brought this action pursuant to 42 U.S.C. §1983, claiming violations of certain of his civil rights. The alleged violations occurred during and arising from criminal prosecutions of plaintiff in courts of the State of Oklahoma. For the reasons set out below, defendants' Motion to Dismiss is hereby sustained.

Plaintiff pleads three causes of action:

Count I: That I was denied my rights to due process of law and put in jeopardy(sic) in case numbers CRF-79-177 and CRF-79-261.

Count II: While under prosecution of said cases, banking records of plaintiff were revealed to the courts and public and violated plaintiff's right to privacy under the state "Financial Privacy Act.

Count III: That I was subjected to embarrassment and caused me unreasonable burden and hardship and placed me in jeopardy by being sentenced to 20 years in both said causes.

In support of his causes of action, plaintiff alleges essentially the following:

- (1) The Ottawa County (Oklahoma) District Attorney's office filed charges against him for two offenses of "Obtaining Merchandise By Bogus Check, After Former Conviction of a Felony."
- (2) The District Attorney caused a subpoena duces tecum to be served on the Miami National Bank (hereafter referred to as the Bank) demanding that certain bank records as to plaintiff's account(s) be brought before the State court.
- (3) Mr. Eugene C. Cantrell, one of the named defendants and a vice-president of the Bank did appear with said records and did

give testimony at preliminary hearings as to the plaintiff here, and that although the plaintiff objected, the "records were allowed to be presented as evidence, and as a result, defendant was bound over for trial in the District Court."

- (4) The two charges were consolidated and plaintiff was brought to trial. During the course of trial the bank records were again subpoenaed and "brought out before the Court and public, by Mr. Eugene C. Cantrell." "This act was done over the objections of the defendant."
- (5) At no time during or prior to the trial was plaintiff notified "that said bank records had been subpoenaed and were to be used as evidence against the defendant."
- (6) As a result, plaintiff was found guilty and sentenced to 20 years in prison in each case.
- (7) That all events as to presentation of bank records violated the "Financial Privacy Act, 6 O.S. §§2201-2206 in that no notice was given to plaintiff, and because plaintiff was without prior knowledge of the subpoena, he was "unable to object before they were presented or to submit a Motion to Quash these records."
- (8) By that act, plaintiff was denied his right to privacy of bank records and was caused "a great deal of embarrassment(sic)." "It also caused a great deal of unreasonable burden and hardship on me, and placed me in jeopardy by being convicted to 20 years in each case," which plaintiff is now serving.

In considering defendants' Motions to Dismiss, the Court takes as true the allegations contained in plaintiff's Complaint. Cruz v. Beto, 405 U.S. 319, 92 S.Ct. 1079, 31 L.Ed.2d 263 (1972). Furthermore, as the plaintiff is proceeding pro se in forma pauperis, the Court allows a more liberal standard of pleading than is normally applicable. See e.g. Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972).

Plaintiff asserts that defendants Cantrell and Miami National Bank violated his civil rights by testifying as to his account records at plaintiff's preliminary hearings and criminal trial. The undisputed record reflects that the appearance of defendants Cantrell and the Bank was in response to a subpoena duces tecum requested to be issued by plaintiff's counsel in the criminal action. See Affidavit of Fayrene Morgan attached to Brief in Support of Defendant Eugene C. Cantrell's Motion to Dismiss filed 1-13-81.

For an action to arise under 42 U.S.C.A. §1983, the named defendants must have acted under color of law. Norton v. Liddel, 620 F.2d 1375 (10th Cir. 1980) It is settled law that a witness who testifies at a judicial proceeding is not acting under color of law. Bennett v. Passic, 545 F.2d 1260, 1264 (10th Cir. 1976) In Bennett the Court established the applicable rule of law as follows:

"The trial judge and the trial judge alone has the duty and power to determine what portions of the witnesses' testimony should be admitted or excluded; thus none of these defendants in testifying could have violated plaintiff's civil rights and any claim that they did so by virtue of their testimony is frivolous."

This Court concludes that the same result obtains in the present case. Therefore, this aspect of plaintiff's action cannot be sustained.

Plaintiff further asserts that the acts of defendants Cantrell and Miami National Bank violated the Financial Privacy Act of Oklahoma, 6 O.S. §§2201-2206. However, this statute was not in effect until over two months after plaintiff's trial on July 11, 1979. (See Affidavit of Richard C. Huddleston, Chief Clerk Administrator, Oklahoma House of Representatives, stating in applicable part that the bill "became effective on October 1, 1979.")

In his response brief filed March 9, 1981, plaintiff appears to admit that in view of the effective date of the Financial Privacy Act of Oklahoma it is not applicable to the present case. Nonetheless, plaintiff asserts the additional claim that the "Federal 'Financial Privacy Act of 1978' would be enforce and would take precedent in said case." (sic) The Court notes that the "Right to Financial Privacy Act of 1978," 12 U.S.C. §§3401-3422 applies only to access to financial records sought by federal "agencies or departments or any officer, employee, or agent thereof." 12 U.S.C. §3401(3) (1978). However, plaintiff's Complaint involves State authorities and private individuals. Therefore, this aspect of plaintiff's action cannot be sustained.

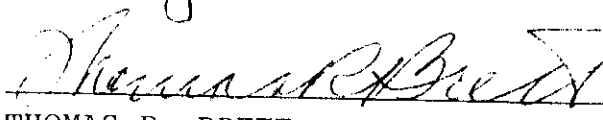
In view of the above, the Motion to Dismiss of defendants, Eugene C. Cantrell and Miami National Bank, is hereby sustained.

Plaintiff's claims against Ottawa County District Attorney Thomas H. May, Assistant District Attorney Morland T. Barton, and Assistant District Attorney Fred H. DeMier arise solely from events surrounding the criminal prosecution of the present plaintiff. The law is clear that a prosecutor acting within the scope of his prosecutorial duty has absolute immunity from an action brought under 42 U.S.C. §1983. This result obtains even if the actions of the prosecutor were undertaken maliciously, intentionally, and in bad faith. Imbler v. Pachtman, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976); White v. Bloom, 621 F.2d 276 (8th Cir. 1980); Norton v. Liddel, 620 F.2d 1375 (10th Cir. 1980). While the Court here draws no conclusion as to the motivation of the Ottawa County District Attorney and his staff in prosecuting plaintiff in State court, the Court finds that even when the facts alleged by plaintiff are broadly construed and taken as true, plaintiff has failed to state a valid claim. Therefore, the Motion to Dismiss by defendants May, Barton and DeMier must be sustained.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss entered by defendants, Eugene C. Cantrell and the Miami National Bank, is hereby sustained and plaintiff's Complaint against them asserting claims under 42 U.S.C. §1983 be and the same is hereby dismissed.

IT IS FURTHER ORDERED that the Motion to Dismiss entered by defendants, Thomas H. May, Morland T. Barton, and Fred H. DeMier, is hereby sustained and plaintiff's Complaint against them asserting claims under 42 U.S.C. §1983 be and the same is hereby dismissed.

ENTERED this 29th day of May, 1981.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAY 29 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

MOHAN RAO MITTAPALLI, M.D.,)
)
Plaintiff,)
)
vs.)
)
SIDNEY H. WONG, M.D., et. al,)
)
Defendants.)

CIVIL ACTION NO. 80-C-583-E ✓

ORDER REMANDING SUIT
TO STATE COURT

The motion of Plaintiff to remand this suit to the District Court of Tulsa County, Oklahoma, coming on for hearing this 29TH day of May, 1981, pursuant to notice duly served upon the Defendants, and the Court having heard the argument of counsel, and being fully advised, upon consideration finds that the said motion should be sustained.

It is therefore ordered that the motion of the Plaintiff to remand this case to the District Court of Tulsa County, Oklahoma, with costs awarded to Plaintiff, be and the same is hereby, granted, and this cause be and the same is hereby remanded to the District Court of Tulsa County, Oklahoma, for further proceedings.

James O. DeLoach
JUDGE OF THE UNITED STATES DISTRICT
COURT

MAY 29 1981

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

VS.

78-C-115-BT

The claim of plaintiff, Dennis Ray Kirk, having been compromised in a bankruptcy proceeding of the defendant, The Downtown Warehouse Co., by Order of December 21, 1979, In Bankruptcy No. 78-C-257, and a Final Order of Distribution having been entered on December 3, 1980, by the Bankruptcy Judge,

IT IS ORDERED this case be dismissed.

ENTERED this 29th day of May, 1981.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 29 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

SMOKEY'S OF TULSA, INC.,
an Oklahoma corporation,

Plaintiff,

v.

AMERICAN HONDA MOTOR CO., INC.,
a California corporation,
et al.,

Defendants.

No. 76-C-623-E


No. 79-C-123-E

STIPULATED DISMISSAL OF ALL UNRESOLVED CLAIMS
BETWEEN PLAINTIFF AND DEFENDANT AMERICAN HONDA

Plaintiff Smokey's of Tulsa, Inc., and defendant American Honda, by and through their attorneys, subject to the approval of the Court, pursuant to the provisions of Rules 15 and 41, Fed.R.Civ.P., hereby stipulate and agree that all currently undisposed of claims pending in this litigation between Smokey's of Tulsa, Inc. and defendant American Honda Motor Co., Inc. shall, and hereby are, dismissed with prejudice. Further, Smokey's of Tulsa, Inc. hereby waives its right to appeal or take any further action with respect to this Court's grant of defendant American Honda's motion for summary judgment as to Counts I and III-VIII of the '623 case, or with respect to the denial of class status with respect to Count II of the '623 case. The effect of this stipulation of dismissal with prejudice shall be to effect the dismissal, with prejudice, of all claims between Smokey's and American Honda in the above


cases, and shall not effect any claims between Smokey's and any other party.

Lawrence A. G. Johnson
1732 East 30th Place
Tulsa, Oklahoma 74114
(918) 743-0459


Attorneys for Plaintiff
Smokey's of Tulsa, Inc.

Pray, Walker, Jackman, Williamson
& Marlar
Floyd L. Walker
2200 Fourth National Building
Tulsa, Oklahoma 74119
(918) 584-4136

Lyon & Lyon
Roland N. Smoot
J. Donald McCarthy
800 Wilshire Boulevard
Los Angeles, California 90017
(213) 489-1600

By 
Attorneys for Defendants
American Honda Motor Co.
Inc., et al.

It is so ORDERED this 29th day of May,
1981.

S/ JAMES O. ELLISON

James O. Ellison
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LEE KENNETH BORNEMAN,)

Plaintiff,)

vs.)

NO. 81-C-165-E

MISSOURI PACIFIC RAILROAD)
COMPANY and MERLE LAMB,)

Defendants.)

FILED

MAY 28 1981

ORDER

JAMES O. ELLISON
U. S. DISTRICT COURT

NOW on this 22nd day of May, 1981, the above entitled matter comes on before me, the undersigned Judge of the Federal District Court for the Northern District Of Oklahoma.

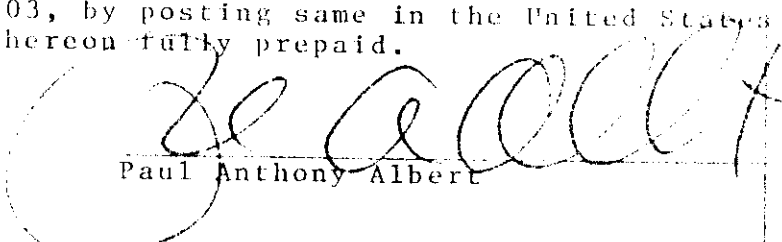
The Court having heard the announcements and stipulation of both the Plaintiff and the Defendant through their respective counsels of record, makes the following Order, to-wit:

IT IS THEREBY ORDERED, ADJUDGED AND DECREED BY THE COURT that the above entitled action be dismissed against the Defendant MERLE LAMB, only, by mutual agreement of the Plaintiff and the Defendant.

S/ JAMES O. ELLISON
FEDERAL DISTRICT JUDGE

CERTIFICATE OF MAILING

I, Paul Anthony Albert, hereby certify that on the 22nd day of May, 1981, I mailed a true and correct copy of the above and foregoing Order to Mr. Bill Powers, Sr., Attorney for Defendant Merle Lamb, at Dyer, Powers, Marsh, Turner & Armstrong, Pepsico Place, Tulsa, Oklahoma, 74103, by posting same in the United States Mails with proper postage thereon fully prepaid.


Paul Anthony Albert

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

THE CATTS COMPANY,
an Oklahoma corporation,

Plaintiff,

vs.

GULF INSURANCE COMPANY,
a foreign insurance
corporation,

Defendant.

No. 76-C-205-C ✓

J U D G M E N T

AND

O R D E R

FILED

MAY 28 1981 *hm*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

In compliance with the directions of the United States Court of Appeals for the Tenth Circuit and the requirements of Federal Rules of Civil Procedure 53(e)(4), the undersigned United States District Judge has reviewed all relevant pleadings, exhibits and the transcript of proceedings of jury trial held on April 11, 1978, and has further reviewed and examined the rulings of law of the Special Master.

After full consideration of the questions of law ruled upon by the Special Master, they are hereby adopted and approved for the reasons as stated by the Special Master.

It is further Ordered Adjudged and Decreed that judgment is hereby entered in behalf of the defendant, Gulf Insurance Company, a foreign insurance corporation, and against the plaintiff, The Catts Company, an Oklahoma corporation.

It is so Ordered this 28th day of May, 1981.

H. Dale Cook
H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

ALITALIA-LINEE AEREE
ITALIANE S.P.A.

Plaintiff,

vs.

FREDERICK B. AYER &
ASSOCIATES, and McDONNELL-
DOUGLAS CORPORATION,

Defendants,

NO: 81-C-20-E

MAY 28 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

STIPULATION OF DISMISSAL

COME NOW the parties herein and hereby stipulate and agree that the above entitled cause of action should be dismissed without prejudice and further dismiss without prejudice to the continuation of the action pending in the Supreme Court of New York County, State of New York, Case No. (Index No.) 11561/79.

It is further stipulated and agreed that the Defendants herein shall reserve their right to make application to this Court for costs and attorneys' fees incurred herein.

Mike Barkley

Mike Barkley
STUDENNY, RISELING & BARKLEY
1924 South Utica, Suite 510
Tulsa, Oklahoma 74104
(918) 747-3611

ATTORNEY FOR PLAINTIFF

Oliver S. Howard

Oliver Howard
Suite 2000 Fourth National Bank
Tulsa, Oklahoma 74119
(918) 582-9201

ATTORNEY FOR DEFENDANT AYER

Ronald Main

Ronald Main
1000 Sooner Federal Building
Tulsa, Oklahoma 74103
(918) 583-2131

ATTORNEY FOR DEFENDANT
McDONNELL-DOUGLAS CORPORATION

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNIT DRILLING & EXPLORATION CO.

Plaintiff,

-vs-

DOW CHEMICAL CO.

Defendant.

No. 81-C-104-E

O R D E R

NOW on this 28 day of May, 1981, the matter comes on for consideration upon the application of the plaintiff for an Order of this Court dismissing the within and foregoing action without prejudice to the bringing of further or future action. The Court finds that such order should issue.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, the within and foregoing action is by the plaintiff dismissed without prejudice to the bringing of a further or future action.

S/ JAMES O. ELLISON

DISTRICT JUDGE

FILED

MAY 28 1981

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HENRY E. MATHIS, An)
Individual, and)
INDUSTRIAL WEED CONTROL)
CO., A Foreign)
Corporation,)
Plaintiffs,)
vs.) No. 81 C-192B
WAN-DA-BAR MFG., INC.,)
A Domestic Corporation,)
HARLEY L. WEST, An)
Individual,)
Defendants.)

FILED

MAY 28 1981

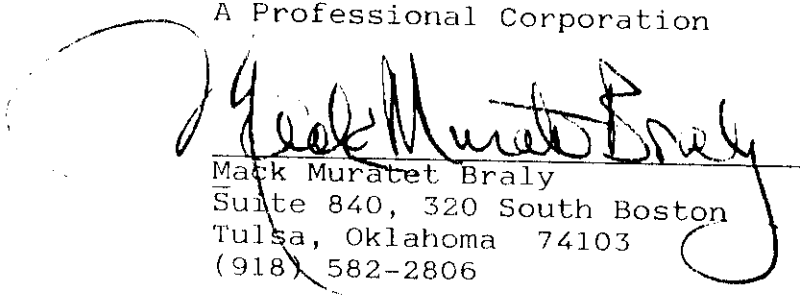
Jack C. Silver, Clerk
U. S. DISTRICT COURT

NOTICE OF DISMISSAL WITH PREJUDICE

Plaintiffs, Henry E. Mathis and Industrial Weed Control Co., by their attorneys Mack Muratet Braly & Associates, A Professional Corporation, pursuant to Rule 41 (a) (1), Fed.R.Civ.P., hereby dismiss the above captioned action with prejudice and without costs to either party, upon settlement of all issues by and between the parties.

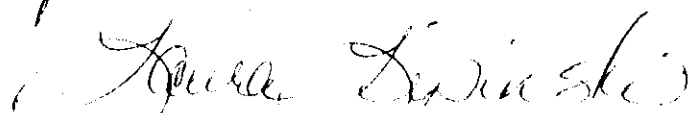
MACK MURATET BRALY & ASSOCIATES

A Professional Corporation


Mack Muratet Braly
Suite 840, 320 South Boston
Tulsa, Oklahoma 74103
(918) 582-2806

ATTORNEYS FOR PLAINTIFFS

I hereby certify that on this 28th day of May 1981, I mailed a true and correct copy of the above and foregoing Notice of Dismissal with Prejudice to Defendants.



IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MORGAN-ROURKE AIRCRAFT SALES,
INC., an Oklahoma corporation,)

Plaintiff,)

vs.)

RYDER TRUCK RENTAL, INC.,)
a Florida corporation,)

Defendant.)

No. 81-C-155-C ✓

F I L E D

MAY 27 1981 *pt*

O R D E R

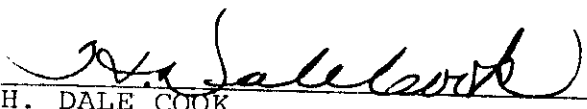
Jack C. Silver, Clerk
U. S. DISTRICT COURT

Now before the Court for its consideration is the defendant's Motion to Transfer this action to the United States District court for the Middle District of Georgia, Macon Division.

This Motion was filed on April 9, 1981. The plaintiff has filed no response. Since it is now more than ten days after the filing of the motion, plaintiff is deemed to have waived any objection thereto. Amended Rule 14(a), Rules of the United States District Court for the Northern District of Oklahoma. (Mar. 1, 1981). The requested transfer is permissible under 28 U.S.C. §1404(a).

Good cause being shown and plaintiff having waived its objection, it is hereby ordered that defendant's Motion to Transfer is hereby sustained.

It is so Ordered this 26th day of May, 1981.


H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) No. 81-C-75-C
)
JESS HEFNER and DON HEFNER,)
d/b/a Hefner and Son Coal Co.,)
)
Defendants.)

FILED

MAY 27 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

AGREED JUDGMENT

This matter comes on for consideration this 27
day of May, 1981, the Plaintiff appearing by Paula S. Ogg,
Assistant United States Attorney for the Northern District of
Oklahoma, and the Defendants Jess Hefner and Don Hefner appear-
ing by Barry Epperson.

The Court being fully advised and having examined
the file herein finds that the Defendants Jess Hefner and
Don Hefner were personally served with Summons and Complaint
on February 26, 1981.

The parties agree and consent that judgment may be
entered against the Defendants, Jess Hefner and Don Hefner,
in the amount of \$600.00.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED
that the Plaintiff have and recover Judgment against Defendants,
Jess Hefner and Don Hefner, for the principal sum of \$600.00
plus interest at the legal rate from the date of this Judgment
until paid.

(Signed) H. Dale Cook
UNITED STATES DISTRICT JUDGE

Approved:

Hubert H. Bryant
United States Attorney

Paula S. Ogg
PAULA S. OGG
Assistant United States Attorney

Barry Epperson
BARRY EPPERSON
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BURGER CHEF SYSTEMS, INC.,

Plaintiff,

-vs-

MPG, INC., (Successor in name to
PALMER ENTERPRISES, INC.), FAST
FOOD SERVICES, INC., FRED I.
PALMER and BETH H. PALMER,

Defendants.

NO. 79-C-137-D

FILED

MAY 27 1981

ORDER OF DISMISSAL WITH PREJUDICE

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Pursuant to the Stipulation of Dismissal with Prejudice
filed by Burger Chef Systems, Inc., plaintiff, and MPG, Inc.,
(Successor in name to Palmer Enterprises, Inc.), Fast Food Services,
Inc., Fred I. Palmer and Beth H. Palmer, defendants, it is hereby

ORDERED THAT the above captioned case be dismissed with
prejudice as to the aforementioned parties and further that each
party is to bear their own costs.

SO ORDERED this 27 day of May, 1981.

FRED DAUGHERTY

United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CARROLL C. THOMPSON, D.D.S., and
BARBARA ANN THOMPSON, husband
and wife,

Defendants.

80-C-4-C
CIVIL ACTION NO. 80-C-40-C

FILED

MAY 27 1981

J U D G M E N T

Jack C. Silver, Clerk
U. S. DISTRICT COURT

THIS MATTER COMES on for consideration this 26
day of May, 1981, the Plaintiff, United States of America,
ex rel., Small Business Administration, appearing by Philard L.
Rounds, Jr., Assistant United States Attorney for the Northern
District of Oklahoma, and the Defendants, Carroll C. Thompson,
D.D.S., and Barbara Ann Thompson, husband and wife, appearing
by Joseph F. Clark, Jr., Attorney-at-Law.

The Court being fully advised and having examined
the file herein finds that Defendants, Carroll C. Thompson,
D.D.S., and Barbara Ann Thompson, were served with Summons and
Complaint on January 8, 1980, as appears from the United States
Marshal's Service herein.

The Defendants having failed to answer or otherwise
plead and default having been entered by the Clerk on May 26, 1981,
this Judgment may be entered against the Defendants, Carroll C.
Thompson, D.D.S., and Barbara Ann Thompson, in the amount of
\$15,664.63 plus interest of \$1,940.13 as of November 30, 1979,
with interest accruing thereafter at the rate of \$2.88 per day,
until paid, plus all costs and expenses of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that
the Plaintiff have and recover judgment against Defendants,
Carroll C. Thompson, D.D.S., and Barbara Ann Thompson, jointly
and severally, for the principal sum of \$15,664.63 plus interest

of \$1,940.13 as of November 30, 1979, with interest accruing thereafter at the rate of \$2.88 per day, until paid, plus all costs and expenses of this action.

(Signed) H. Dale Cook

H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 26 1981

10

M. H. PARRY, et al,)
)
Plaintiffs,)
)
v.)
)
BRUNSWICK CORPORATION,)
)
Defendant.)

Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. 77-C-203-B ✓

FINAL DECREE AND JUDGMENT

This is a suit to collect royalties due on a patent license agreement for the period from July 1, 1976 to January 28, 1977, when the license agreement was cancelled.

This Court has determined that said license agreement does not by its terms constitute a misuse of the patents licensed thereunder; and

This Court has also determined that the conduct of the licensor in not complying with the licensee's request for a quotation of individual royalty rates on each of the thirty-three licensed patents does not constitute misuse of such licensed patents, as more fully set forth in the memorandum opinion dated December 3, 1980; and

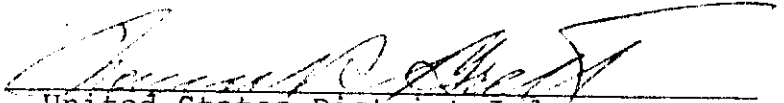
This Court has further determined that the defenses of invalidity and noninfringement of the licensed patents are not available to the defendant-licensee because such defenses were not timely raised, as more fully set forth in the order dated April 9, 1981.

It being represented to the Court by the parties, through their attorneys, that the amount due and owing according to the terms of the license agreement is the sum of One Million One Hundred Forty-five Thousand Eight Hundred Fifty-one Dollars and fifty-four cents (\$1,145,851.54), which


sum includes all royalties for the period commencing July 1, 1976 and terminating January 28, 1977, and legal interest up to May 26, 1981;

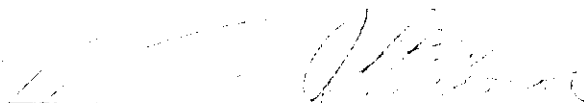
NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

That judgment is hereby entered against the defendant Brunswick Corporation and in favor of the plaintiffs in said sum of One Million One Hundred Forty-five Thousand Eight Hundred Fifty-one Dollars and fifty-four cents (\$1,145,851.54) together with interest thereon at the rate of twelve percent (12%) per annum from the date of judgment until paid in full and together with court costs accrued and accruing.


United States District Judge
5-26-81

APPROVED AS TO FORM ONLY:


Attorney for Plaintiffs


Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BUELL CABINET COMPANY, INC.,
Plaintiff,

vs.

No. 77-C-169-C ✓

RICHARD S. SUDDUTH and
STEVEN E. JANCO, individually,
and d/b/a WORLD PROPERTIES, a
joint venture;
OLD WORLD PRODUCTS CORPORATION,
a corporation; McKEE INCOME REALTY
TRUST, a business trust organized
under the laws of the Commonwealth
of Massachusetts; and SOONER
FEDERAL SAVINGS AND LOAN
ASSOCIATION OF TULSA,
Defendants.

FILED

MAY 26 1981 *hm*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT

On this 1st day of May, 1981, pursuant to previous assignment, plaintiff's Application For Attorney Fees and Defendants' Objection To Form Of Journal Entry of Proposed Judgment came on regularly for hearing. The appearing parties announced ready. The Court, after having heard the testimony of witnesses sworn and having examined exhibits introduced and the court file herein and having heard arguments of counsel, finds:

That on November 20, 1980, pursuant to the stipulation of all appearing parties that the only issue of fact remaining to be litigated upon the trial was when title to the subject real property was conveyed on March 26, 1975 to "Stephen H. Janco and Richard S. Sudduth, d/b/a World Properties", did they intend to take title as a partnership, said issue of fact has been answered by special verdict of the jury in the negative.

That plaintiff is entitled to recover a reasonable attorney fee in seeking to enforce the judgment lien rendered in C-75-2521 against subject real property and against

Richard S. Sudduth, Old World Products Corporation and McKee Income Realty Trust, a business trust organized under the laws of the Commonwealth of Massachusetts, in the sum of \$25,711.17 and court costs accrued as of December 17, 1980 of \$409.15 as determined by Jack C. Silver, Court Clerk, and court costs hereafter accruing.

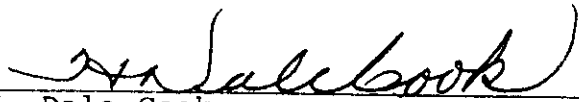
It, is, therefore, FOUND, ORDERED, ADJUDGED and DECREED:

1. That the February 27, 1976 judgment entered in Tulsa County District Court Case No. C-75-2521 in favor of Buell Cabinet Company, Inc. against Richard S. Sudduth in the sum of \$17,250.00, with interest thereon at 10% per annum from May 20, 1975 until paid, together with interest on the composite amount at the rate of 10% per annum from the date of judgment until paid, together with attorney fee of \$1,725.00 and costs of said action, accrued and accruing, is adjudged to be a second lien upon real property referred to as a one-half interest in "The Commerce Center", also described as Lots 19 through 26, Block 8, Katy Freeway Industrial Park, an addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof, subject only to a first and prior mortgage lien given by John A. Rupe and Anna B. Rupe, husband and wife, to Sooner Federal Savings and Loan Association of Tulsa, in the original principal sum of \$765,000.00, dated September 12, 1974, filed September 12, 1974, in Book 4136, page 1640, which has a present balance of \$693,841.31.

2. That plaintiff shall have an attorney fee judgment in the sum of \$25,711.17 against Richard S. Sudduth, Old World Products Corporation and McKee Income Realty Trust, a business trust organized under the laws of the Commonwealth of Massachusetts, and court costs in the sum of \$409.15 as determined by Jack C. Silver, Clerk, United States District

Court, on December 17, 1980, and court costs thereafter accruing.

Entered this 26th day of May, 1981.


H. Dale Cook
Chief Judge
United States District Court

Approved as to form:

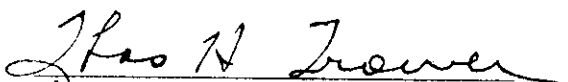
Joe Francis
1801 First National Bank Building.
Tulsa, Oklahoma 74103

Steven M. Harris
P. O. Box 1679
Tulsa, Oklahoma 74101

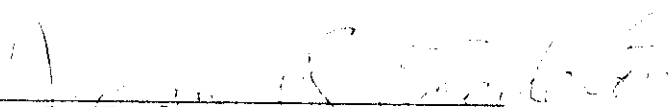
Attorneys for McKee Income Realty Trust

Ronald Main
Sooner Federal Building
Tulsa, Oklahoma 74103

Attorney for Richard S. Sudduth


Thomas H. Trower
Sooner Federal Building
Tulsa, Oklahoma 74103

Attorney for Sooner Federal
Savings and Loan Association
of Tulsa


James R. Eagleton
Ira L. Edwards, Jr.
Eagleton, Eagleton & Owens, Inc.
1606 First National Bank Bldg.
Tulsa, Oklahoma 74103

Attorneys for Plaintiff

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE MAY 22 1961
NORTHERN DISTRICT OF OKLAHOMA


Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JERRY DALE GORDON, et al.,)
)
Defendant.)

CIVIL ACTION NO. 79-C-367-6

O R D E R

Upon application by the United States of America for good cause having been shown, and by reason of failure on the part of the defendants to plead or answer within 20 days of publication, it is hereby ORDERED, ADJUDGED, and DECREED that judgment shall be entered in favor of the United States of America against the defendants, Robert L. Stotts, Donna Faye Stotts, Mark Ridgeway, Eastway Investment Corporation of Tulsa, J.P. Dilley, and James Dilley a/k/a Jim Dilley.


~~CHIEF~~ JUDGE ~~H. DALE COOK~~
UNITED STATES DISTRICT COURT

NOTE: THIS ORDER IS TO BE MAILED
BY MAIL TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

12

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 21 1981 *mm*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JACK I. GAITHER,

Plaintiff,

vs.

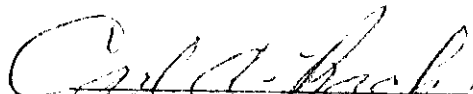
HONEYWELL, INC., a
corporation,

Defendant.

No. 81-C-184-E ✓

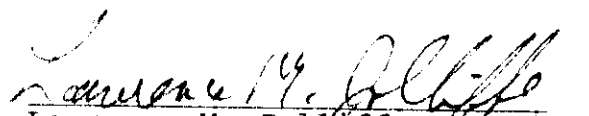
STIPULATION AND
DISMISSAL WITH
PREJUDICE

The parties hereto stipulate, through their respective attorneys, that this action should be and hereby is dismissed with prejudice.


Carl A. Back, Esquire

Law Building, Suite 100
500 West Seventh Street
Tulsa, Oklahoma

Attorney for Plaintiff


Lawrence M. Jolliffe, Esquire

Honeywell Inc.
Honeywell Plaza
Minneapolis, Minnesota 55408

Attorney for Defendant.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

E. E. COOPER,

Plaintiff,

vs.

WE-CO OF GRAINOLA, INC., an
Oklahoma Corporation, and THE
HOME NATIONAL BANK OF ARKANSAS
CITY, KANSAS, a Nationally
Chartered Banking Institution,

Defendants.

FILED

MAY 21 1981

✓ No. 80-C-366-E

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

The Court presently has before it for consideration Plaintiff's motion to remand.

This action was commenced in the District Court of Osage County, Oklahoma, on June 4, 1980. Plaintiff is a resident and citizen of Colorado; Defendant We-Co of Grainola, Inc., is an Oklahoma corporation, and Defendant Home National Bank of Arkansas City, Kansas, is a federally-chartered banking institution located in the State of Kansas.

Plaintiff argues that inasmuch as We-Co is an Oklahoma corporation, and therefore a "citizen" of Oklahoma, the removal of this action is improper under 28 U.S.C. § 1441(b), which states:

Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought. (emphasis added).


Defendant Bank argues that its removal is proper, arguing that the cause of action stated against it by Plaintiff is a separate and independent claim or cause of action, apparently relying upon the provisions of 28 U.S.C. § 1442(c):

Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction.

that while Plaintiff casts his claim as two causes of action, Plaintiff is, in fact seeking redress for the failure of Defendant We-Co to make certain payments upon a note, which failure, it is alleged, was caused by the actions of Defendant Bank. It appears to the Court that Plaintiff's claim against We-Co and its claim against the Bank are "interlocked," see American Fire & Casualty Co. v. Finn, 341 U.S. 6, 71 S.Ct. 534 (1951), and are not, therefore, "separate" and "independent" within the meaning of 28 U.S.C. § 1441(c). Accordingly, Plaintiff's motion to remand, being well-taken, should be granted.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Remand be, and the same hereby is, sustained, and the Clerk of this Court is hereby directed to take forthwith the necessary steps to effect the remand of this action to the District Court in and for Osage County, State of Oklahoma.

It is so Ordered this 22nd day of May, 1981.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 20 1981 *rum*

Jack E. Silver, Clerk

U. S. DISTRICT COURT

ROBERT K. BELL ENTERPRISES, INC.,)
an Oklahoma corporation,)

Plaintiff,)

vs.)

RAY MARSHALL, Secretary of Labor,)
United States Department of Labor,)
et al.,)

Defendants.)

No. 78-C-545-E ✓

O R D E R

This case involves the validity of an OSHA inspection warrant. The Tulsa area office of OSHA sent a compliance officer to inspect Plaintiff's amusement park on June 14, 1978, but the officer was refused permission to conduct his inspection. The compliance officer then applied to U. S. Magistrate Claudine S. Barnes for an inspection warrant, which was issued on August 24, 1978. That same day, the officer returned to Plaintiff's place of business, and was allowed to conduct his inspection pursuant to the warrant. Shortly after the completion of the inspection, on August 30, 1978, the Secretary issued a citation to Plaintiff alleging that certain unsafe conditions existed. Plaintiff duly contested the citation before the OSHRC. On November 2, 1978, Plaintiff instituted this action, alleging that the inspection warrant was unlawful and in violation of the Fourth Amendment, and requesting that the warrant be quashed and that any information or evidence obtained therefrom be suppressed. Plaintiff also sought to have the Defendants enjoined from taking any further action with regard to the inspection warrant, the inspection, any information or evidence received therefrom, the citation, the penalty notice, and the administrative action. On November 20, 1978, Defendants filed their motion to dismiss. On November 22, 1978, the OSHRC stayed the administrative proceedings pending a decision by this Court. On that same date, the matter was referred to U. S. Magistrate Robert Rizley, for findings and recommendations on Defendants' motion. These were filed on April 24, 1979. The Magistrate recommended that the motion to dismiss should be sustained. Plaintiff duly objected to the findings and recommenda-

tions of the Magistrate.

On August 10, 1979, this action was stayed pending the Tenth Circuit's decision in Marshall v. Horn Seed Co., No. 79-1501. That decision was rendered on April 7, 1981, and clarifies in this Circuit the standards by which such warrants are to be measured.

The question which the Court now confronts, however, is a narrow one: under the circumstances of this case, must the Plaintiff exhaust its administrative remedies before it may challenge the constitutionality of an OSHA inspection. It is the Court's conclusion that Plaintiff must.

Six Circuits have considered this question, and five have determined that in cases such as this exhaustion is required, and the district court should refrain from exercising its jurisdiction. See Baldwin Metals Co. v. Donovan, 642 F.2d 768 (Fifth Cir. 1981); Matter of J. R. Simplot Co., 640 F.2d 1134 (Ninth Cir. 1981); Marshall v. North American Car Co., 626 F.2d 320 (Third Cir. 1980); Babcock & Wilcox Co. v. Marshall, 610 F.2d 1128 (Third Cir. 1979); Marshall v. Central Mine Equipment Co., 608 F.2d 719 (Eighth Cir. 1979); In re Worksite Inspection of Quality Products, 592 F.2d 611 (First Cir. 1979); but see Weyerhaeuser Co. v. Marshall, 592 F.2d 373 (Seventh Cir. 1979).

After an examination of these cases, in light of the comprehensive scheme of review and the administrative process created by Congress for matters of this type, this Court concludes that the better reasoned approach is for the district court to decline to exercise its jurisdiction, leaving the Plaintiff to pursue his claims through the administrative process and the Court of Appeals.

It is, therefore, the decision of this Court that the Plaintiff's objection to the findings and recommendations of the Magistrate be overruled, and the Court hereby adopts the recommendations of the Magistrate, as supplemented by the authority cited herein.

IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss be, and the same hereby is, sustained, and this action is hereby dismissed.

It is so Ordered this 20th day of May, 1981.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF OKLAHOMA

FILED

MAY 20 1981

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)

Plaintiff)

v.)

FAIRMONT HOTEL COMPANY)
d/b/a The Fairmont Mayo)
Hotel and GATEWAY STANDARD,)
INC., d/b/a The Mayo,)

Defendants)

CIVIL ACTION

No. 80-398-E

ORDER

On the 20th day of May, 1981 came before this Court Plaintiff
EEOC and Defendant Gateway Standard's Joint Motion for Dismissal and Dissolution
of Consent Decree.

It appearing to the Court that the above entitled action has been fully
settled, adjusted, and compromised and that the terms of the simultaneously
filed consent decree allow it to be dissolved upon a joint motion by the
parties; therefore

IT IS ORDERED AND ADJUDGED that the above entitled action be, and it is
hereby, dismissed, without cost to either party and with prejudice to refiling
by the Plaintiff.

Dated May 20, 1981.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHARLES R. KNIGHT,
Plaintiff,
-VS-
CHEMETRON CORPORATION,
Defendant.

No. 79-C-589-BT

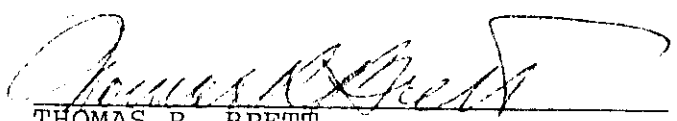
FILED
MAY 20 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

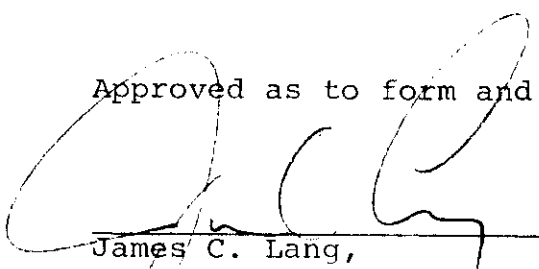
ORDER OF DISMISSAL

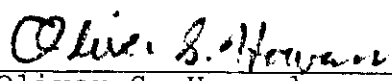
On this 20th day of May, 1981, upon application of the parties for an Order allowing Plaintiff to dismiss his Complaint with prejudice, the Court having examined said application, finds that the parties entered into compromise settlement in consideration of which Plaintiff has agreed to dismiss with prejudice all claims involved in the Complaint; the Court being fully advised in the premises finds that the Complaint should be dismissed with prejudice.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action and claims of the Plaintiff filed herein against the Defendant be and the same are hereby dismissed with prejudice to any further action.


THOMAS R. BRETT,
United States District Judge

Approved as to form and content:


James C. Lang,
SNEED, LANG, ADAMS, HAMILTON,
DOWNIE & BARNETT, P.C.
4th Fl., 6 E. 5th St.
Tulsa, Oklahoma 74103
(918) 583-3145
ATTORNEYS FOR PLAINTIFF


Oliver S. Howard
GABLE, GOTWALS, RUBIN, FOX,
JOHNSON & BAKER
20th Fl., 4th Nat'l. Bldg.
Tulsa, Oklahoma 74119
(918) 582-9201
ATTORNEYS FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

87344 CANADA, LTD./LTEE,
a Canadian corporation,
d/b/a QUAKER INDUSTRIES,

Plaintiff,

vs.

No. 79-C-696-B ✓

DECKER CASTINGS, INC.,
an Oklahoma corporation;
WILL F. DECKER, an
individual; and HOYT
DECKER, an individual,

Defendants.

FILED
MAY 20 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

There comes on for consideration the application of the parties hereto for an Order dismissing the above-captioned action with prejudice, and the Court being fully advised and having considered the Settlement and Compromise Agreement filed herein FINDS AND IT IS ORDERED

That plaintiff's Second Amended Complaint and each and every cause of action and claim for relief set forth therein should be and are hereby dismissed with prejudice;


That defendants' Counterclaim and each and every cause of action and claim for relief asserted therein should be and are hereby dismissed with prejudice; and

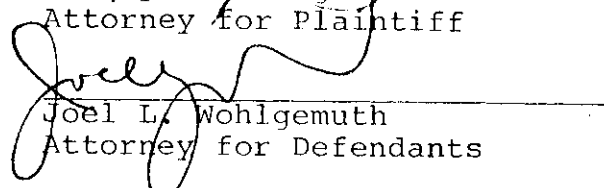
That each party hereto shall bear its own costs and attorneys' fees.

DATED this 20th day of MAY, 1981.

APPROVED:


JUDGE THOMAS R. BRETT


Sidney G. Dunagan
Attorney for Plaintiff


Joel L. Wohlgemuth
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ADMIRAL STATE BANK, an Oklahoma)
banking corporation,)

Plaintiff,)

vs.)

KANSAS CITY FIRE AND MARINE)
INSURANCE COMPANY,)

Defendant.)

FILED

MAY 20 1981

**Jack C. Silver, Clerk
U. S. DISTRICT COURT**

No. 80-C-265-B

ORDER OF DISMISSAL

ON this 20th day of May, 1981, upon the written application of the plaintiff for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that for good cause shown that said Complaint should be dismissed pursuant to said application.

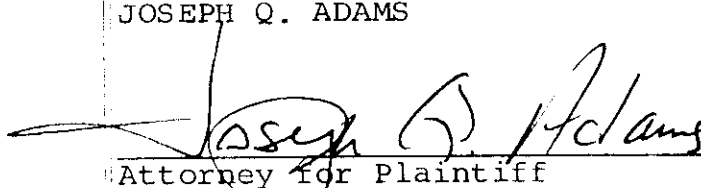
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby are dismissed with prejudice to any future action.

S/ THOMAS R. BRETT

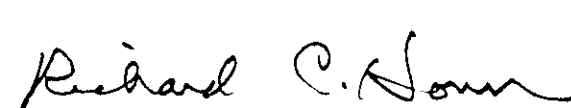
JUDGE, DISTRICT COURT OF THE UNITED
STATES, NORTHERN DISTRICT OF OKLA-
HOMA

APPROVALS:

JOSEPH Q. ADAMS


Attorney for Plaintiff

RICHARD C. HONN


Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAMES WILLIAMS,

Plaintiff,

vs.

CITY OF TULSA,

Defendant.

No. 80-C-350-BT

F I L E

MAY 20 1981

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Jack C. Silver, Clerk
U. S. DISTRICT COURT

This case came on for trial before the Court sitting alone on April 28 and 29, 1981. After hearing evidence of the parties, arguments of counsel, and considering all applicable legal authority, the Court finds and concludes as follows:

FINDINGS OF FACT

1. The plaintiff, James Williams ("Williams"), was a black male employee residing in Tulsa, Oklahoma hired by the defendant, City of Tulsa ("City"), on April 22, 1975 under a Public Works Program ("CETA"), and worked as a mechanic on the day shift out of the city Refuse Maintenance Garage.
2. The Refuse Department of the City consists of employees of approximately 75% to 80% of the black race.
3. Williams was discharged on May 8, 1978, for conduct unbecoming a City employee in that he refused to participate in, cooperate with, or answer questions in an internal investigation of all Refuse Maintenance employees regarding possible thefts of City property.
4. The City of Tulsa had experienced many thefts of small items of equipment and material from its Refuse Maintenance Garage for an extended period. On or about December 1, 1977, as an investigative tool, the City had installed a visual surveillance and listening system and a burglar alarm system. These devices strongly indicated the thefts were occurring during working hours.

5. Between January 9 and January 20, 1978, major thefts occurred consisting of expensive, bulky, and large items, some fastened to the Maintenance Garage facility and others not transportable by one person, suggesting several persons were involved and perhaps employees had unrevealed knowledge of the thefts.

6. About two weeks before March 8, 1978, the Director of the Refuse Department assembled all employees, including some supervisory personnel, assigned to and working out of the Maintenance Garage, and ordered all to take a polygraph examination to aid in an internal investigation. Concerning the examination, he advised as follows:

a. The reason for the examination, i.e., it was to inquire to see who had information regarding the Maintenance Garage missing equipment items;

b. Employees could invoke the right not to answer a particular question on the grounds that it might incriminate them;

c. Their answers could not be used against them in a criminal proceeding;

d. They could have their attorney present if they wished; and

e. Refusal to take the polygraph test would result in dismissal.

7. At the employee meeting the polygraph examination procedure and sample questions were explained by a representative of Bays Detective Agency, a licensed polygraph operator, who also later administered the tests.

8. At the time all employees were assembled and told of the polygraph examination, Williams questioned the City's authority to require him to submit to a polygraph examination and stated he would consult an attorney who he would probably have present at the time of the examination.

9. On March 7, 1978 while Williams was working in the field he was contacted to appear that afternoon for the polygraph examination. He replied, "I'm not coming in and let you give me the test, just like that." Williams said he meant by his answer he intended to contact his lawyer and have him present for the examination. Williams attempted to communicate with one of the two lawyers with whom he had previously discussed the matter but was unable to locate him. On March 7, 1978 Williams did not report back to his superior relative to why he would not appear for the polygraph examination but made an appearance before the Tulsa City Commission concerning recognition of a rival union organization with which he had become associated.

10. The next day, March 8, 1978, the plaintiff and two other employees who also had refused to take or complete the polygraph test, were summoned by the Director of the Refuse Department and asked to explain their refusal. Their contention was the City had no authority to require the submission to such an examination. At that time Williams did not explain he was unable to contact his lawyer to be present for the examination. Neither did Williams offer to submit to the polygraph examination if rescheduled and his attorney permitted to be present.

11. The polygraph examination was given, or attempted, to ten white and seven black employees; however, three of the group, including Williams, refused to submit or to complete the examination and were discharged. The three were black.

12. The City had previously ordered other white persons to submit to a polygraph examination to aid in internal investigations under similar criteria and had discharged a white employee for refusal to take the examination.

13. The results of the polygraph examination of other employees working in the Maintenance Garage facility indicated various ones had unrevealed knowledge concerning the alleged thefts. The results also implicated some employees.

14. The plaintiff appealed his discharge to the Civil Service Commission of the City which found, after hearing, there was just cause for dismissal from employment.

15. The plaintiff, within 180 days of firing, filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission, which returned a "no cause" ruling.

16. The plaintiff filed a charge of unlawful discrimination with the Office of Revenue Sharing of the U.S. Treasury Department, which found there was no evidence of a different treatment accorded blacks and whites in the Maintenance Garage.

17. The plaintiff received a right to sue letter from the Equal Employment Opportunity Commission and filed suit within 90 days thereafter.

18. The discharge of the plaintiff, James Williams, on March 8, 1978 was because he failed to cooperate in the taking of the polygraph examination concerning the Maintenance Garage thefts and not because he is a member of the black race.

19. The use of the polygraph examination as an investigative tool under the facts and circumstances herein was both reasonable and lawful.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and the subject matter of this action under authority of 42 U.S.C. §2000e, et seq.

2. Any Finding of Fact above that may also be properly characterized a Conclusion of Law is incorporated herein.

3. The evidence taken as a whole does not establish the defendant discriminated on the basis of race against the plaintiff in his employment in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 801-05, 36 L.Ed.2d 668, 677-79 (1973); see also Board of Trustees v. Sweeney, 439 U.S. 24, 99 S.Ct. 295, 58 L.Ed.2d 216 (1978); Furnco Construction Corp. v. Waters,

438 U.S. 567, 57 L.Ed.2d 957 (1978); Hernandez v. Alexander.
607 F.2d 920 (10th Cir. 1979); Texas Department of Community
Affairs v. Burdine, ____ S.Ct. ____, ____ L.Ed. ____ (No.
79-1764, decided March 4, 1981).


4. Even if it can be concluded the plaintiff established a prima facie case of discrimination, it was rebutted by the defendant's evidence that plaintiff's discharge was because of his refusal to cooperate in the polygraph examination investigation. The plaintiff's evidence does not establish this reason was a pretext for racial discrimination.

5. The plaintiff has failed to establish that the treatment accorded to him as opposed to Caucasian or non-black employees was disparate. The evidence taken as a whole supports the conclusion the manner in which the defendant treated or dealt with the plaintiff as an employee, including his discharge, was the same accorded to other employees irrespective of race. Givhan v. Western Line Consolidated School District, 438 U.S. 410, 58 L.Ed.2d 619 (1979); Mt. Healthy City Board of Education v. Doyle, 429 U.S. 274, 287, 50 L.Ed.2d 471, 484 (1978).

6. Under the facts, circumstances, and criteria set down, the City could lawfully conduct the investigative polygraph examination. Eshelman v. Blubaum, 560 P.2d 1283, 1285-6 (Ariz. 1977); Uniformed Sanitation Men Ass'n. v. Commissioner of Sanitation, 392 U.S. 280, 88 S.Ct. 1917, 20 L.Ed.2d 1089 (1968); Gardner v. Broderick, 392 U.S. 273, 88 S.Ct. 1913, 20 L.Ed.2d 1082 (1968); Garriety v. State of New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967).

7. Judgment should be entered for the defendant and against the plaintiff with costs assessed to the plaintiff. Each party is to pay their own respective attorneys fees.

DATED this 19th day of May, 1981.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE .
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAMES WILLIAMS,

Plaintiff,

vs.

CITY OF TULSA,

Defendant.

)
)
)
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)
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)

No. 80-C-350-BT

FILED


MAY 20 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

Pursuant to the Findings of Fact and Conclusions of Law entered this date, Judgment is entered in favor of the defendant, City of Tulsa, and against the plaintiff, James Williams, with proper costs assessed against the plaintiff.

DATED this 19th day of May, 1981.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

LYONS & DEAN, Attorneys and)
Counsellors at Law, a General)
Co-Partnership, consisting of)
Tony Jack Lyons and Gary J. Dean,)
Plaintiffs,)
vs.)
GEORGIA-PACIFIC CORPORATION,)
a corporation,)
Defendant.)

MAY 20 1981

John A. Smith, Clerk
U.S. District Court

No. 80-C-443-BT

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This case came on for trial before the Court sitting alone on May 4, 1981. After hearing the evidence presented, arguments of counsel, and considering the applicable legal authorities, the Court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The plaintiffs, Lyons & Dean, are a general co-partnership consisting of Tony Jack Lyons and Gary J. Dean engaged in the practice of law in Mayes County, Oklahoma, and are citizens of the State of Oklahoma.

2. The defendant, Georgia-Pacific Corporation, is a corporation organized under the laws of the State of Georgia with its principal place of business at Portland, Oregon.

3. The events surrounding the dispute occurred in Mayes County, Oklahoma in the Northern Judicial District of Oklahoma and the amount in controversy, exclusive of interest and costs, exceeds \$10,000.00.

4. Lyons & Dean was counsel for the City of Pryor, N-Ren Corporation, and National Gypsum Company, each of whom is an electrical utility customer of the Grand River Dam Authority ("GRDA"), in litigation claiming alleged overcharges for utility services filed in the District Court of Mayes County, Oklahoma in 1979.

Settlement of these claims on a basis of 60% of the amount of the overcharge was paid to the claimants in October 1979.

5. On September 19, 1979 the Board of Directors of GRDA directed its General Counsel to negotiate settlements with all customers that had been overcharged. The defendant, Georgia-Pacific, was one of these customers. Although a copy of such GRDA Board of Directors resolution had been mailed to its customers, for some unknown reason it had not come to the attention of Georgia-Pacific before January 8, 1980.

6. On January 8, 1980 attorney Gary J. Dean attended a meeting at the N-Ren office in which representatives of Georgia-Pacific were also present for the purpose of discussing an entirely different legal matter. Present were employees McCutchen and Cannon of N-Ren as well as attorney Dean and Maurice Rigby, Georgia-Pacific plant manager at Pryor, Oklahoma, along with its counsel, David Garrett.

7. As the meeting was about to close, McCutchen of N-Ren inquired of Rigby if Georgia-Pacific had gotten its GRDA overcharge refund yet. Rigby stated he was unaware of what he was talking about. Attorney Dean explained he had represented N-Ren, the City of Pryor, and the National Gypsum Company, and recovered collectively overcharge refunds totaling approximately \$500,000.00 while charging a 20% attorney's fee. Dean said he would represent Georgia-Pacific on the same 20% contingent fee basis and thought he could recover a like percentage (60%) of the overcharge for Georgia-Pacific from GRDA within 30 days. Rigby responded it sounded interesting to him but approval by his management would be required.

8. Thinking he had been employed, Dean communicated with GRDA the following day on January 9, 1980 about the Georgia-Pacific overcharge claim. On January 28, 1980 Dean presented Rigby with a check and a final release he had obtained from GRDA for \$159,819.58, 60% of the Georgia-Pacific computed overcharge, payable to Georgia-Pacific and Gary J. Dean.

9. Rigby contacted his superiors and was told not to accept the check in settlement of the Georgia-Pacific claim against GRDA as they wished to investigate the matter further. The draft has not been presented for payment.

10. There was no meeting of the minds between the plaintiffs and the defendant concerning the essential elements of the alleged employment agreement.

11. The value of the services rendered by plaintiffs on behalf of the defendant was negligible because the Board of Directors of GRDA had months before directed its counsel to negotiate similar settlements with customers such as Georgia-Pacific.

12. Georgia-Pacific has not yet settled its overcharge claim with GRDA and is presently pursuing its claim (No.80-C-444-C, United States District Court for the Northern District of Oklahoma) in litigation for the full amount of the computed overcharge, being represented by its counsel herein.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and the subject matter herein. 28 U.S.C. §1332

2. Any Finding of Fact herein which could properly be characterized a Conclusion of Law is hereby incorporated.

3. No binding contract resulted from the January 8, 1980 discussions of the parties and neither are the plaintiffs entitled to recover on a quantum meruit basis for the value of services rendered. Sarber v. Harris, 368 P.2d 93 (Okla.1962) and Title 15, O.S.A. §§51 and 66. A claim of an attorney for professional services rendered must, like a claim for any other service, rest upon an express or implied contract. Baumrin v. Cournoyer, 448 F.Supp. 225, 228 (Mass. 1978); Jett v. Merchants and Planters Bank, 228 F.2d 156, 159 (4th Cir. 1956); Andrews v. Central Surety Insurance Co., 295 F.Supp. 1223, 1229 (So.Car.1969).

4. In order to constitute ratification or estoppel to deny the validity or the terms of an alleged contract, it is essential that the acts relied upon for ratification or estoppel must be had and done with full knowledge of the facts. Board of Education of City of Bartlesville, Washington County v. Montgomery, 60 P.2d 752 (Okla.1936).

A Judgment should be entered in favor of the defendant and against the plaintiffs in keeping with the Findings and Conclusions expressed herein.

ENTERED this 19th day of May, 1981.

A handwritten signature in cursive script, reading "Thomas R. Brett". The signature is written in dark ink and is positioned above a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LYONS & DEAN, Attorneys and)
Counsellors at Law, a General)
Co-Partnership, consisting of)
Tony Jack Lyons and Gary J. Dean,)
Plaintiffs,)
vs.)
GEORGIA-PACIFIC CORPORATION,)
a corporation,)
Defendant.)

F I L E D

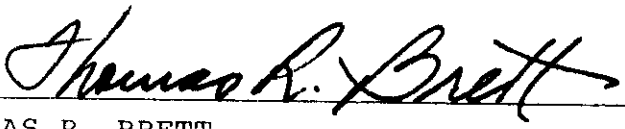
MAY 20 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT
No. 80-C-443-BT

J U D G M E N T

Pursuant to the Findings of Fact and Conclusions of Law filed this date, Judgment is hereby entered for the defendant, Georgia-Pacific Corporation, and against the plaintiffs, Lyons & Dean, Attorneys and Counsellors at Law, a general co-partnership consisting of Tony Jack Lyons and Gary J. Dean. The defendant is to recover its proper costs but the parties are to pay their own respective attorneys' fees.

DATED this 19th day of May, 1981.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

JACK R. BOND,
Plaintiff,
-vs-
JACKIE E. MCGINNESS,
Defendant.

FILED

MAY 20 1981

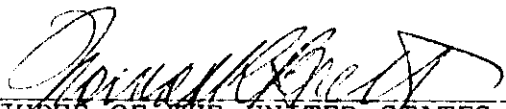
Jack C. Silver, Clerk
U. S. DISTRICT COURT

NO. 80-C-609-B

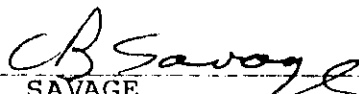
ORDER OF DISMISSAL


On this 20th day of May, 1981, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.


JUDGE OF THE UNITED STATES DISTRICT
COURT, NORTHERN DISTRICT

APPROVED AS TO FORM:


C. B. SAVAGE
Attorney for Plaintiff


RAY H. WILBURN
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

COMES NOW the plaintiff, through her attorney, C. Jack Maner, and the defendant, through his attorney, Paul T. Boudreaux, and stipulate that the above captioned cause of action be dismissed with prejudice to filing a future action herein.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

C. Jack Vance
Attorney for Plaintiff

Paul T. Boudheaux
Attorney for Defendant

ORDER

And now on this 20th day of May, 1981, there came on for consideration before the undersigned Judge of the United States District Court for the Northern District of Oklahoma, stipulation of the parties hereto of dismissal, parties hereto having advised the court that all disputes between the parties have been settled.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above styled cause be and the same is hereby dismissed with prejudice to the right of the plaintiff to bring any future action arising from said cause of action.

Thomas K. Gresh
Judge

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

THE CITY OF BRISTOW, OKLAHOMA,)
a municipal corporation,)

Plaintiff,)

-vs-)

UNITED STATES FIDELITY &)
GUARANTY COMPANY, a foreign)
corporation,)

Defendant.)

FILED

MAY 19 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

NO. 80-C-339-B

STIPULATION OF DISMISSAL

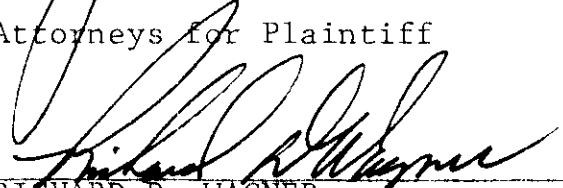
IT IS HEREBY stipulated by plaintiff and defendant that
the above entitled action be dismissed without prejudice and
with each party to bear their own costs.


JOE SAM VASSAR

SELLERS & HARLAN

By 
JOHN L. HARLAN

Attorneys for Plaintiff


RICHARD D. WAGNER
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
MAY 19 1981

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JAMES N. CLINE,)
)
Defendant.)

Jack M. Silver, Clerk
U. S. DISTRICT COURT

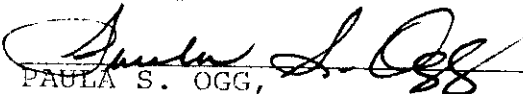
No. 81-C-140-B

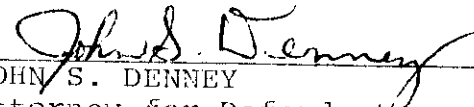
STIPULATION OF DISMISSAL

COME NOW the United States of America, Plaintiff, by and through its attorney, Paula S. Ogg, Assistant United States Attorney for the Northern District of Oklahoma, and James N. Cline, by and through his attorney, John S. Denney, and stipulate and agree that this action be and that the same is herewith dismissed, with prejudice, each party to bear its own costs.

UNITED STATES OF AMERICA

HUBERT H. BRYANT, United States
Attorney


PAULA S. OGG,
Assistant United States Attorney


JOHN S. DENNEY
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAY 18 1981

**Jack C. Silver, Clerk
U. S. DISTRICT COURT**

PIPELINE INDUSTRY BENEFIT FUND,)
)
Plaintiff,)
)
vs.)
)
MARY K. JENNINGS, STEVEN B.)
JENNINGS and WENDELL JENNINGS, JR.,)
)
Defendants.)

No. 80-C-650-B

ORDER FOR DISMISSAL

Pursuant to Stipulation for Dismissal filed herein on the 12th day of May, 1981, and in accordance with the terms therein,

IT IS THEREFORE ORDERED by the Court that the plaintiff herein, Pipeline Industry Benefit Fund, disburse funds to the defendant beneficiaries as set out in the Stipulation, to wit: To Mary K. Jennings, the sum of \$3,000.00 less \$23.00 for her share of filing fee or a total sum of \$2,977.00; to Steven B. Jennings, the sum of \$3,500.00 less \$23.00 for his share of filing fee or a total sum of \$3,477.00; and to Wendell Jennings, Jr., the sum of \$3,500.00 less \$23.00 for his share of filing fee.

IT IS FURTHER ORDERED that this action is dismissed with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

15/ H. Dale Cook
JUDGE OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LEWIS AARON BOWEN,
Petitioner,
vs.
A. I. MURPHY, Warden,
Respondent.

No. 81-C-161-C ✓

FILED

MAY 18 1981 *[Signature]*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

This proceeding is brought pro se pursuant to the provisions of Title 28, U.S.C. §2254 by a state prisoner confined in the Oklahoma State Penitentiary at McAlester, Oklahoma. Petitioner is presently serving a sentence rendered by the District Court of Tulsa County, State of Oklahoma in Case No. CRF-77-2815. Petitioner pleaded guilty in that case to a charge of robbery with firearms after former conviction of a felony. Petitioner appealed and his judgment and sentence were affirmed. Petitioner applied to the Tulsa County District Court for post-conviction relief. That application was granted in part but denied as to the grounds raised in the present petition. Petitioner states that he appealed this denial of his application but does not state the results of the appeal.

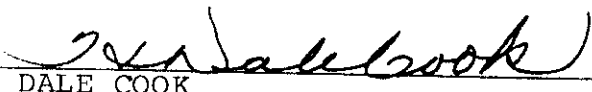
The petitioner alleges that the authorities have failed to give him credit on his present sentence for time served on earlier vacated convictions in Case Nos. 20016, 20823, 21260, and CRF-71-394. Petitioner demands that the Court order the granting of such credit on his present sentence.

The relief requested by the petitioner is not authorized by State law, and the State's failure to grant such relief to the petitioner does not state a constitutional violation cognizable by this Court in a Section 2254 proceeding. See United States ex

rel. Smith v. Rundle, 285 F.Supp. 965 (E.D.Pa. 1968); Abel v. State, 612 P.2d 283 (Crim.App.Okla. 1980).

It therefore appears from the face of the pleadings that the petitioner is not entitled to relief. There is no need for an evidentiary hearing. Accordingly, the petition is hereby dismissed.

It is so Ordered this 18th day of May, 1981.


H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

RICHARD E. DOUBLE,

Petitioner,

vs.

MACK ALFORD, Warden, and
JAN ERIC CARTWRIGHT,
Attorney General,

Respondents.

No. 81-C-209-C ✓

FILED

MAY 18 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

This proceeding is brought pro se pursuant to the provisions of Title 18, U.S.C. §2254 by a state prisoner confined in the Stringtown Correctional Center at Stringtown, Oklahoma. Petitioner is presently serving a sentence rendered by the District Court of Tulsa County, State of Oklahoma in Case No. CRF-80-2815. Petitioner did not appeal his judgment and conviction, nor did he apply to the State court for any post-conviction relief. Essentially, the petitioner alleges that he was coerced into entering a plea of guilty to the charges pending against him by virtue of the conditions in the Tulsa County Jail where he was held pending trial.

It is clear from the face of the application that the petitioner has failed to exhaust his state remedies. The ground for relief raised herein has not been presented to any State court.

An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

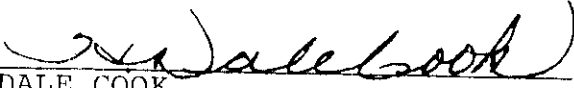
An applicant shall not be deemed to have exhausted the remedies available in the

courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented. 28 U.S.C. §§2254(b),(c). See Preiser v. Rodriguez, 411 U.S. 475, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973).

The petitioner has not alleged the existence of any of the circumstances where exhaustion would not be not required.

For the foregoing reasons, it is therefore ordered that the application for a writ of habeas corpus of Richard E. Double pursuant to Title 28 U.S.C., §2254, is hereby dismissed. There is no need for an evidentiary hearing.

It is so Ordered this 18th day of May, 1981.


H. DALE COOK
Chief Judge, U. S. District Court

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAY 18 1981

MFA INSURANCE COMPANY

Plaintiff

vs.

OKLAHOMA STATE UNION OF THE
FARMERS' EDUCATION AND
COOPERATIVE UNION OF AMERICA,
EVELYN M. HILL and SILVEN DALE
SHATTUCK

Defendants

Jack C. Silver, Clerk
U. S. DISTRICT COURT

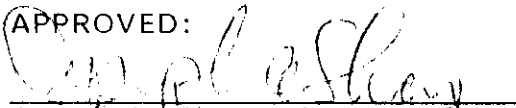
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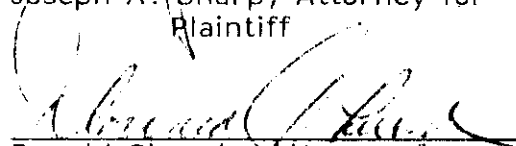
ORDER

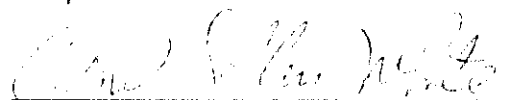
It being admitted that the amount in controversy in the above entitled cause does not exceed the sum of \$10,000, exclusive of interest and costs, and the Court having no jurisdiction in the matter, said cause is dismissed.


Judge

APPROVED:


Joseph A. Sharp, Attorney for
Plaintiff


Donald Church, Attorney for
Defendant Oklahoma State Union
of the Farmers' Education and
Cooperation Union of America


April Sellers White, Attorney for
Defendant Evelyn M. Hill

_WS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAY 18 1981

ROBERT E. COTNER,

Plaintiff,

vs.

THE TULSA TRIBUNE, STEVE WARD,
et al.,

Defendants.

No. 81-C-211-E ✓

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

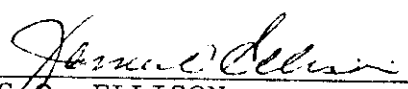
This Court allowed Plaintiff to file this action and proceed in forma pauperis pursuant to 28 U.S.C. § 1915 on May 13, 1981. Plaintiff's civil rights complaint was filed on May 14, 1981.

After reviewing the complaint, the Court concludes that it does nothing more than allege that the Defendant newspaper and its employees published libelous statements concerning the Plaintiff. Such claims are not cognizable under 42 U.S.C. § 1983, because a "defamed person has not been deprived of any right, privilege or immunity secured to him by the Federal Constitution or laws of the United States." Ellingburg v. Lucas, 518 F.2d 1196, 1197 (Eighth Cir. 1975). See also Taylor v. Nichols, 409 F.Supp. 927 (D. Kan. 1976), aff'd, 558 F.2d 561 (Tenth Cir. 1977); Duff v. Sherlock, 432 F.Supp. 423 (E.D. Pa. 1977); Everett v. City of Chester, 391 F.Supp. 26 (E.D. Pa. 1975); Hahn v. Sargent, 388 F.Supp. 445 (D. Mass. 1975), aff'd, 523 F.2d 461 (First Cir. 1975), cert. denied, 425 U.S. 904, 96 S.Ct. 1495 (1976).

Plaintiff's complaint, should, accordingly, be dismissed under the provisions of 28 U.S.C. § 1915, because it is frivolous, since Plaintiff's allegations plainly show no deprivation of a constitutional right cognizable under 42 U.S.C. § 1983. See Collins v. Cundy, 603 F.2d 825 (Tenth Cir. 1979).

IT IS THEREFORE ORDERED that this action be, and the same hereby is, dismissed.

It is so Ordered this 18th day of May, 1981.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 18 1981 *hmm*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)
)
Plaintiff,)
)
vs.)
)
100.86 Acres of Land, More or)
Less, Situate in Osage County,)
State of Oklahoma, and Claude)
Millsap, et al., and Unknown)
Owners,)
)
Defendants.)

CIVIL ACTION NO. 78-C-53-B ✓
Master File #398-12
Tracts Nos. 703-1 and 703-2,
703E-1 through 703E-9

J U D G M E N T

NOW, on this 18th day of May, 1981, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on the Report of Commissioners filed herein on April 1, 1981, and the Court, after having examined the files in this action and being advised by counsel for the parties, finds that:

2.

This judgment applies to the entire estates condemned in Tracts Nos. 703-1, 703-2, and 703E-1 through 703E-9, as such estates and tracts are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and the subject matter of this action.

4.

Service of Process has been perfected either personally or by publication notice, as provided by Rule 71A of the Federal Rules of Civil Procedure, on all parties defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the property

described above in paragraph 2. Pursuant thereto, on February 7, 1978, the United States of America filed its Declaration of Taking of such property, and title thereto should be vested in the United States of America, as of the date of filing such instrument.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the described estates taken in the subject tracts a certain sum of money, and all of this deposit has been disbursed, as set out below in paragraph 12.

7.

The Report of Commissioners filed herein on April 1, 1981, is accepted and adopted as a finding of fact as to subject tracts. The amount of just compensation as to the estates taken in subject tracts as fixed by the Commission is set out below in paragraph 12.

8.

This judgment will create a deficiency between the amount deposited as estimated just compensation for the estates taken in subject tracts and the amount fixed by the Commission and the Court as just compensation, and a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 12.

9.

The defendant named in paragraph 12 as owner of the estates taken in subject tracts is the only defendant asserting any interest in such estates; all other defendants having either disclaimed or defaulted, the named defendant was (as of the date of taking) the owner of the estates condemned herein and, as such, is entitled to receive the just compensation awarded by this judgment.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use the subject tracts, as they are described in the Complaint filed herein, and such property, to the extent of the estates described in such Complaint is condemned, and title thereto is vested in the United States of America, as of February 7, 1978, and all defendants herein and all other persons are forever barred from asserting any claim to such estates.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking in this case, the owner of the estates taken herein in subject tracts was the defendant whose name appears below in paragraph 12, and the right to receive the just compensation for such estates is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Report of Commissioners filed herein on April 1, 1981, hereby is confirmed and the sum therein fixed is adopted as the award of just compensation for the estates taken in subject tracts, as shown by the following schedule:

TRACTS NOS. 703-1, 703-2, and
703E-1 thru 703E-9, Inclusive

OWNER: Claude Millsap

Note: On the date of taking John Hancock Mutual Life Insurance Company held a mortgage on this property. This mortgage has been paid in full and the mortgagee has disclaimed any interest in the award.

Award of just compensation pursuant to Commissioners' Report -----	\$72,628.00	\$72,628.00
Deposited as estimated compensation -	37,575.00	
Disbursed to owner -----		<u>37,575.00</u>
Balance due to owner -----		\$35,043.00 plus interest
Deposit deficiency -----	\$35,053.00 plus interest	

13.

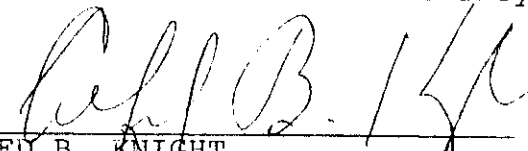
It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall pay into the Registry of this Court for the benefit of the owner the deposit deficiency for the subject tracts as shown in paragraph 12, in the total amount of \$35,053.00, together with interest on such deficiency at the rate of 6% per annum from February 7, 1978, until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for subject tracts in this civil action.

After such deficiency deposit has been made, the Clerk of this Court shall disburse the entire sum then on deposit for the subject tracts to Claude Millsap.


UNITED STATES DISTRICT JUDGE

APPROVED:


HUBERT A. MARLOW
Assistant United States Attorney


ALFRED B. KNIGHT
Attorney for Defendant Owner

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 18 1981 *hmm*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)
)
Plaintiff,)

vs.)

131.54 Acres of Land, More or)
Less, Situate in Osage County,)
State of Oklahoma, and Claude)
Millsap, et al., and Unknown)
Owners,)

Defendants.)

CIVIL ACTION NO. 78-C-54-Bt ✓

Tracts Nos. 1002-1, -2 & -3,
and 1002E-1 through 1002E-8

(Included in D.T. filed in
Master File #398-12)

AND

United States of America,)
)
Plaintiff,)

vs.)

5.20 Acres of Land, More or)
Less, Situate in Osage County,)
State of Oklahoma, and Claude)
Millsap, et al., and Unknown)
Owners,)

Defendants.)

CIVIL ACTION NO. 78-C-56-Bt

Tract No. 1015E, COMBINED

(Included in D.T. filed
in Master File #398-12)

J U D G M E N T

1.

NOW, on this 18 day of May, 1981, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on the Report of Commissioners filed herein on April 1, 1981, and the Court after having examined the files in this action and being advised by counsel for the parties, finds that:

2.

This judgment applies to the entire estates condemned in Tracts Nos. 1002-1, 1002-2, 1002-3, 1002E-1 thru 1002E-8, and 1015E, as such estates and tracts are described in the Complaints filed in these actions.

3.

The Court has jurisdiction of the parties and the subject matter of these actions.

4.

Service of Process has been perfected either personally or by publication notice, as provided by Rule 71A of the Federal Rules of Civil Procedure, on all parties defendant in these causes.

5.

The Acts of Congress set out in paragraph 2 of the Complaints filed herein give the United States of America the right, power and authority to condemn for public use the property described above in paragraph 2. Pursuant thereto, on February 7, 1978, the United States of America filed its Declaration of Taking of such property, and title thereto should be vested in the United States of America, as of the date of filing such instrument.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the described estates taken in the subject tracts a certain sum of money, and all of this deposit has been disbursed, as set out below in paragraph 12.

7.

The Report of Commissioners filed herein on April 1, 1981, is accepted and adopted as a finding of fact as to subject tracts. The amount of just compensation as to the estates taken in subject tracts as fixed by the Commission is set out below in paragraph 12.

8.

This judgment will create a deficiency between the amount deposited as estimated just compensation for the estates taken in subject tracts and the amount fixed by the Commission and the Court as just compensation, and a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 12.

9.

The defendant named in paragraph 12 as owner of the estates taken in subject tracts is the only defendant asserting

any interest in such estates; all other defendants having either disclaimed or defaulted, the named defendant was (as of the date of taking) the owner of the estates condemned herein and, as such, is entitled to receive the just compensation awarded by this judgment.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to condemn for public use the subject tracts, as they are described in the Complaints filed herein, and such property, to the extent of the estates described in such Complaints is condemned, and title thereto is vested in the United States of America, as of February 7, 1978, and all defendants herein and all other persons are forever barred from asserting any claim to such estates.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking in this case, the owner of the estates taken herein in subject tracts was the defendant whose name appears below in paragraph 12, and the right to receive the just compensation for such estates is vested in the party so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Report of Commissioners filed herein on April 1, 1981, hereby is confirmed and the sum therein fixed is adopted as the award of just compensation for the estates taken in subject tracts, as shown by the following schedule:

TRACTS NOS. 1002-1, 1002-2, 1002-3, 1002E-1
thru 1002E-8, and 1015E, Inclusive

OWNER: Claude Millsap

Award of just compensation pursuant
to Commissioners' Report for
both civil actions, combined ---- \$177,204.00 \$177,204.00

Deposited as estimated compensation:

C.A. 78-C-54Bt ---- \$59,350.00
C.A. 78-C-56Bt ---- 300.00

Total ----- \$59,650.00

Disbursed to owner:

C.A. 78-C-54Bt ---- \$59,350.00
C.A. 78-C-56Bt ---- 300.00

Total ----- \$ 59,650.00

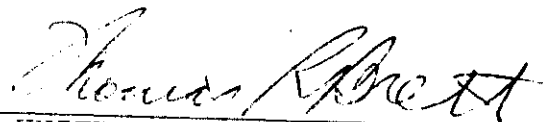
Balance due to owner ----- \$117,554.00
plus
interest

Deposit deficiency ----- \$117,554.00
plus
interest


13.

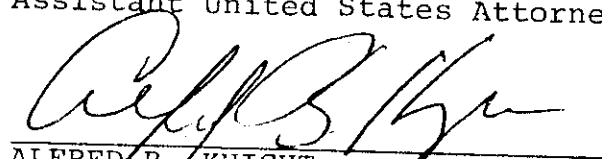
It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall pay into the Registry of this Court for the benefit of the owner the deposit deficiency for the subject tracts as shown in paragraph 12, in the total amount of \$117, 554.00, together with interest on such deficiency at the rate of 6% per annum from February 7, 1978, until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for subject tracts in Civil Action No. 78-C-54Bt.

After such deficiency deposit has been made, the Clerk of this Court shall disburse the entire sum then on deposit for the subject tracts in said Civil Action No. 78-C-54Bt to Claude Millsap.


UNITED STATES DISTRICT JUDGE

APPROVED:


HUBERT A. MARLOW
Assistant United States Attorney


ALFRED B. KNIGHT
Attorney for Defendant Owner

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 18 1981 *JS*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America,)
)
Plaintiff,)
)
vs.)
)
8.03 Acres of Land, More or)
Less, Situate in Osage County,)
State of Oklahoma, and Pamela)
Ann Millsap, a/k/a Pamela Ann)
Haines, et al., and Unknown)
Owners,)
)
Defendants.)

CIVIL ACTION NO. 78-C-55-B ✓

Tracts Nos. 1003-1, 1003-2,
1003E-1 and 1003E-2

(Included in D.T. filed in
Master File #398-12)

J U D G M E N T

1.

NOW, on this 18 day of May, 1981, this matter comes on for disposition on application of the Plaintiff, United States of America, for entry of judgment on the Report of Commissioners filed herein on April 1, 1981, and the Court after having examined the files in this action and being advised by counsel for the parties, finds that:

2.

This judgment applies to the entire estates condemned in Tracts Nos. 1003-1, 1003-2, 1003E-1 and 1003E-2, as such estates and tracts are described in the Complaint filed in this action.

3.

The Court has jurisdiction of the parties and the subject matter of this action.

4.

Service of Process has been perfected either personally or by publication notice, as provided by Rule 71A of the Federal Rules of Civil Procedure, on all parties defendant in this cause.

5.

The Acts of Congress set out in paragraph 2 of the Complaint filed herein give the United States of America the right, power and authority to condemn for public use the property described above in paragraph 2. Pursuant thereto, on February 7,

1978, the United States of America filed its Declaration of Taking of such property, and title thereto should be vested in the United States of America, as of the date of filing such instrument.

6.

Simultaneously with filing the Declaration of Taking, there was deposited in the Registry of this Court as estimated compensation for the described estates taken in the subject tracts a certain sum of money, and all of this deposit has been disbursed, as set out below in paragraph 12.

7.

The Report of Commissioners filed herein on April 1, 1981, is accepted and adopted as a finding of fact as to subject tracts. The amount of just compensation as to the estates taken in subject tracts as fixed by the Commission is set out below in paragraph 12.

8.

This judgment will create a deficiency between the amount deposited as estimated just compensation for the estates taken in subject tracts and the amount fixed by the Commission and the Court as just compensation, and a sum of money sufficient to cover such deficiency should be deposited by the Government. This deficiency is set out below in paragraph 12.

9.

The defendants named in paragraph 12 as owners of the estates taken in subject tracts are the only defendants asserting any interest in such estates; all other defendants having either disclaimed or defaulted, the named defendants were (as of the date of taking) the owners of the estates condemned herein and, as such, are entitled to receive the just compensation awarded by this judgment.

10.

It Is, Therefore, ORDERED, ADJUDGED and DECREED that the United States of America has the right, power and authority to

condemn for public use the subject tracts, as they are described in the Complaint filed herein, and such property, to the extent of the estates described in such Complaint is condemned, and title thereto is vested in the United States of America, as of February 7, 1978, and all defendants herein and all other persons are forever barred from asserting any claim to such estates.

11.

It Is Further ORDERED, ADJUDGED and DECREED that on the date of taking in this case, the owners of the estates taken herein in subject tracts were the defendants whose names appear below in paragraph 12, and the right to receive the just compensation for such estates is vested in the parties so named.

12.

It Is Further ORDERED, ADJUDGED and DECREED that the Report of Commissioners filed herein on April 1, 1981, hereby is confirmed and the sum therein fixed is adopted as the award of just compensation for the estates taken in subject tracts, as shown by the following schedule:

TRACTS NOS. 1003-1, 1003-2

1003E-1 and 1003E-2

OWNERS:

Pamela Ann Millsap
a/k/a
Pamela Ann Haines
Claudia Lanette Millsap, and
Melinda Lou Millsap, as tenants in common.

NOTE: Claudia Lanette and Melinda Lou
were both minor children, therefore
their father, Claude Millsap, Jr.,
was appointed guardian ad litem in
this action and is thus entitled
to receive their share of the award
of just compensation.

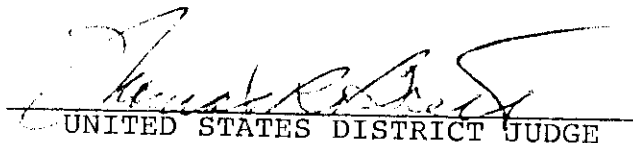
Award of just compensation, pursuant to Commissioners' Report -----	\$4,658.55	\$4,658.55
Deposited as estimated compensation ---	3,650.00	
Disbursed to owners -----		<u>3,650.00</u>
Balance due to owners -----		\$1,008.55 plus interest
Deposit deficiency -----	\$1,008.55 plus interest	

13.


It Is Further ORDERED, ADJUDGED and DECREED that the United States of America shall pay into the Registry of this Court for the benefit of the owners the deposit deficiency for the subject tracts as shown in paragraph 12, in the total amount of \$1,008.55, together with interest on such deficiency at the rate of 6% per annum from February 7, 1978, until the date of deposit of such deficiency sum; and such sum shall be placed in the deposit for subject tracts in this civil action.

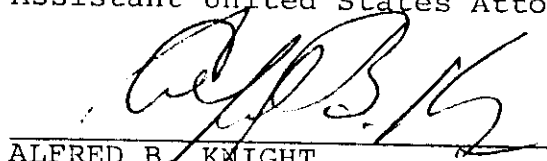
After such deficiency deposit has been made, the Clerk of this Court shall disburse the entire sum then on deposit for the subject tracts as follows, to:

Pamela Ann Haines ----- 1/3
 Claude Millsap, Jr., guardian ad
 litem for Claudia Lanette Millsap
 and Melinda Lou Millsap ----- 2/3.


 UNITED STATES DISTRICT JUDGE

APPROVED:


 HUBERT A. MARLOW
 Assistant United States Attorney


 ALFRED B. KNIGHT
 Attorney for Defendant Owner

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OKLAHOMA

FILED

MAY 18 1981

DENNIS HOWELL,

Plaintiff,

vs.

TED BROWN,

Defendant.

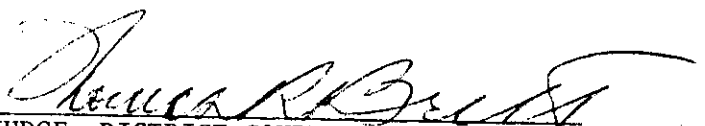
NO. 80-C-494-B ✓

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL

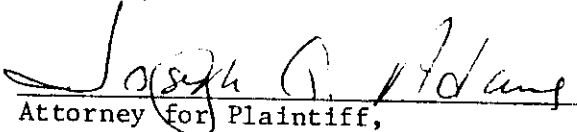
ON This 18 day of May, 1981, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

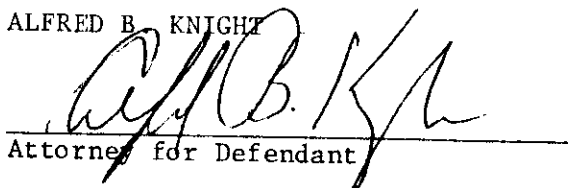

JUDGE, DISTRICT COURT OF THE UNITED
STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

JOSEPH Q. ADAMS


Attorney for Plaintiff,

ALFRED B. KNIGHT


Attorney for Defendant

FILED

MAY 18 1981

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

DONALD D. DEAN,

Plaintiff,

v.

Civil Action No.
80-C-472-B

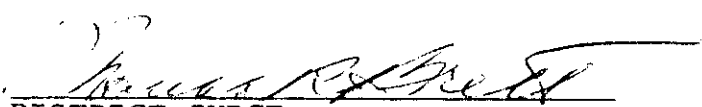
CENTRAL STATES, SOUTHEAST AND
SOUTHWEST AREAS PENSION FUND,

Defendant.

DISMISSAL ORDER

The parties in the above-captioned case having made a
Joint Motion for its dismissal in accordance with their
Settlement Agreement,

IT IS HEREBY ORDERED that the above-captioned matter be
dismissed, with prejudice, and without the assessment of
attorneys fees, costs, or any other monies against any parties
except as specifically set forth in their Settlement Agreement.


DISTRICT JUDGE

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WEBCO TANK INCORPORATED,

Plaintiff,

vs.

CANON U.S.A., INC.,
a New York corporation,

Defendant.

FILED

MAY 15 1981 *rm*


Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. 80-C-43-C ✓

ORDER OF REMAND

On this 13th day of May, 1981, pursuant to regular assignment, the above styled case comes on for pre-trial conference and the parties appear by their respective attorneys of record. Thereupon, counsel for plaintiff moves that the case be remanded to the District Court of Creek County, Oklahoma, on the grounds and for the reason that the undisputed pleadings reflect on their face that the amount in controversy is less than that required to give this Court jurisdiction of this case, and it is so ordered by the Court.

It is further ordered that each party in this case shall pay its own costs incurred in this Court, including, but not limited to, attorneys' fees.


Chief Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SPERRY RAND CORPORATION,
individually and on behalf
of its SPERRY VICKERS, TULSA
DIVISION PLANT,

Plaintiff,

v.

F. RAY MARSHALL, et al.,

Defendants.

No. 78-C-358-C

FILED

MAY 14 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

This cause having come before this Court upon a Joint Stipulation for Dismissal, and the Court having reviewed same, and having found such Stipulation to be appropriate, and the Court being fully advised in the premises, it is, therefore,

ORDERED, ADJUDGED and DECREED that such Stipulation be approved, and that this action be, and hereby is, dismissed without prejudice, with all parties to bear their own costs.

It further appearing that Defendants have stipulated that they will not release the Program data of Plaintiff pursuant to the FOIA request in question, and that no such other FOIA requests for the Program data of Plaintiff are pending, and the parties having stipulated that these facts render the continuance of the pending temporary injunction unnecessary at this time, it is further ORDERED that the temporary injunction in this matter be, and hereby is, vacated.

SO ORDERED this 13 day of may, 1981.

W. S. Salebook
U.S. District Court Judge

Approved as to form and content:

Mary T. Matthies
Mary T. Matthies

Hubert A. Marlow
Hubert A. Marlow

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

F I L E D

RAYMOND J. DONOVAN, Secretary of
Labor, United States Department
of Labor,

Plaintiff,

v.

BOB SPARKS and TULSA INDUSTRIAL
DISPOSAL SYSTEMS,

Defendants.

MAY 14 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Civil Action File

No. 79-C-726E

ORDER OF DISMISSAL

The defendants have stipulated that they will comply with the provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201, et seq.), and have paid the overtime compensation sought by the plaintiff. The parties having entered into a stipulation that this action may be dismissed, it is

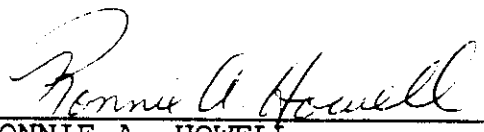
ORDERED, ADJUDGED and DECREED that the above styled and numbered cause be, and it hereby is, dismissed with costs to be taxed against defendants for which execution may issue.

Dated this 14th day of May, 1981.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Approved as to Form and Content:


RONNIE A. HOWELL
Attorney for Plaintiff


C. JACK MANER
Attorney for Defendants

SOL Case No. 09889

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MAY 14 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
CHARLES A. ROACHES, et. al.,)
)
Defendants.)

CIVIL ACTION NO. 80-C-232-B

PARTIAL AGREED JUDGMENT

This matter comes on for consideration this 14th
day of May, 1981, the Plaintiff appearing by Paula S. Ogg,
Assistant United States Attorney for the Northern District of
Oklahoma, and the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma,
appearing by David Carpenter, Assistant District Attorney.

The Court being fully advised and having examined the
file herein finds that Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma,
were served with the Summons and Complaint on May 2, 1980, and
have filed their answers to the Complaint on May 19, 1980; and,
that Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, were served
with the Summons and Amendment to Complaint on February 2, 1981,
and in lieu of filing an answer to said Amendment have agreed
that judgment may be entered as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that any
property lien in favor of said Defendants, County Treasurer,
Tulsa County, Oklahoma, and Board of County Commissioners,
Tulsa County, Oklahoma, for personal property taxes is specifically
junior and inferior to the mortgage lien of the United States;
that the real estate taxes on the subject property due the
County of Tulsa are in an amount of \$222.72 for 1978, and in

an amount of \$176.05 for 1979, which claims are prior and superior claims against the subject property, but that upon payment of these amounts (without payment of personal property taxes) all claims of Tulsa County against the subject property would be extinguished; that such amounts above stated for real estate taxes for the years 1978 and 1979, are computed as of February 15, 1980.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any real estate taxes upon this property due and owing to Tulsa County and remaining unpaid at the time of sale be declared valid and superior liens notwithstanding the above, but that any judgment granted the Board of County Commissioners, Tulsa County, Oklahoma, and the County Treasurer, Tulsa County, Oklahoma, for personal property taxes be declared junior and inferior to the first mortgage lien of Plaintiff.

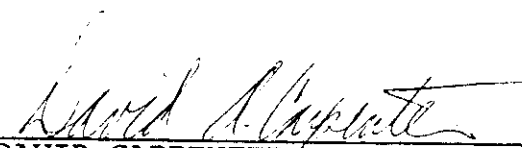
S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

HUBERT H. BRYANT
United States Attorney


PAULA S. OGG
Assistant United States Attorney


DAVID CARPENTER
Assistant District Attorney
Attorney for Board of County Commissioners
and County Treasurer, Tulsa County

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

MICHAEL P. YOUNG,
Plaintiff,
vs.
FIRST CITIZENS BANK, a
Texas Banking Corporation,
Defendant.

No. 80-C-490-C ✓

FILED

MAY 14 1981 *hm*

Jack C. Silver
U. S. DISTRICT COURT

FINAL JUDGMENT

Upon the Stipulation of Dismissal of Plaintiff Michael P. Young and Defendant First Citizen's Bank filed herein on May 13, 1981 showing the court that the claims asserted in this action by Plaintiff, and by Defendant as counterclaimant, have been fully settled and compromised, it is hereby ORDERED, ADJUDGED AND DECREED that Plaintiff's Petition filed in the District Court of Creek County, Oklahoma on August 7, 1980 and removed to this court on August 26, 1980 be, and the same is hereby, dismissed with prejudice.

It is further hereby ORDERED, ADJUDGED AND DECREED that Defendant's Counterclaim filed herein on September 18, 1980 be, and the same is hereby, dismissed with prejudice.

W. S. Salebrook
United States District Judge

FILED

MAY 14 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

SMOKEYS OF TULSA, INC.

Plaintiff

vs

76-C-623-E

AMERICAN HONDA MOTOR CO., INC. et al.

Defendants

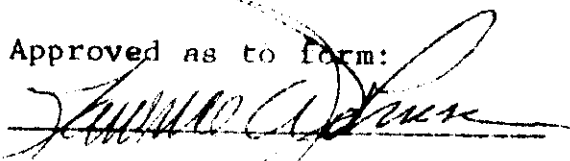
ORDER

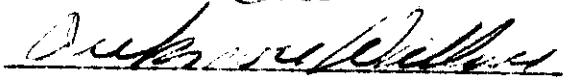
On this 14th day of May, 1981 the court considered the Joint Application of the Plaintiff and the Defendant, Bill Bennett, for the dismissal of the Complaint and the Cross-Complaint with prejudice to any further action thereon. The court finding that such relief is proper, IT IS ORDERED the Complaint of the Plaintiff insofar as the same applies to Bill Bennett, and the Cross-Complaint of the Defendant should be and the same are dismissed with prejudice to any further action thereon.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Approved as to form:


for the Plaintiff


for Bill Bennett

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
LITIGANTS IMMEDIATELY

FILED

MAY 14 1981

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CHRISTOPHER WALKER,
Plaintiff,

v.

MCDONNEL-DOUGLAS CORP.,
A Maryland Corporation,
Defendant.

No. 80-C-323-E

ORDER

COMES NOW this Court and based upon the application
of the plaintiff, hereby orders the case dismissed without pre-
judice.

S/ JAMES O. ELLISON

THE HONORABLE JAMES O. ELLISON
JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT
OF OKLAHOMA

MAY 14 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURTIN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF OKLAHOMA

LESLIE SKOEN,

Plaintiff,

vs.

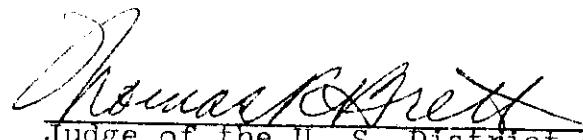
No. 80-C-188-Bt

THE ST. PAUL INSURANCE CO.,
CONTINENTAL CASUALTY CO., et al

Defendants.)

ORDER OF DISMISSAL

Now, on this 14th day of May, 1981, the plaintiff in this cause, Leslie Skoen, having heretofore filed herein his dismissal with prejudice of this cause, stating therein that he had entered into an agreed settlement with the defendants, and the attorney for the defendants having agreed that said settlement had been entered into, it is hereby ordered that this cause be and the same is hereby dismissed.


Judge of the U. S. District Court
for the Northern District of Oklahoma

The undersigned, Richard D. Wagner, attorney for the defendants herein, states to the court that the plaintiff and defendants entered into an agreed settlement of this cause and that plaintiff has been paid and has received the total agreed consideration of said settlement.



FILED

MAY 14 1981

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

LOWELL JONES,

Plaintiff,

vs.

LARRY T. BROWN, Warden, et al.,

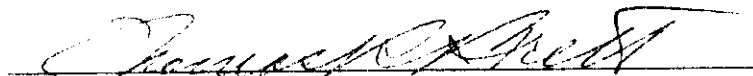
Defendants.

No. 80-C-520-BT ✓

ORDER OF DISMISSAL

Pursuant to the written request for dismissal of the plaintiff received on the 13th day of May, 1981, this case is hereby dismissed with prejudice to the filing of a future action hereon.

ENTERED this 14th day of May, 1981.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MATHEY MANUFACTURING COMPANY,)
an Oklahoma corporation,)

Plaintiff,)

vs.)

EXPLORATION AND PRODUCTION)
SERVICES (North Sea), LIMITED,)
a British corporation, and)
AMASAR, INC., a Louisiana)
corporation,)

Defendants.)

No. 80-C-528-Bt

FILED

MAY 14 1981

**Jack C. Silver, Clerk
U. S. DISTRICT COURT**

JOURNAL ENTRY OF JUDGMENT
AGAINST THE DEFENDANT AMASAR, INC.

Now on this 6th day of May, 1981, the Court has for consideration the motion of Mathey Manufacturing Company, an Oklahoma corporation, ("Mathey") for summary judgment against Amasar, Inc., a Louisiana corporation, ("Amasar") Defendant herein. Mathey appears by its attorney, Mr. Charles W. Shipley, and Amasar appears by its attorney, Mr. C. Clay Roberts. The Court, after carefully reviewing the entire file, the briefs and documents submitted by counsel, the admissions of Amasar pursuant to Rule 36(a) of the Federal Rules of Civil Procedure, the cited authorities, and having heard oral argument of counsel on the motion, and being fully advised in the premises, find that the Plaintiff's Motion for Summary Judgment against the Defendant Amasar should be sustained and further finds:

1. That the Plaintiff Mathey is an Oklahoma corporation with its principal place of business located in Tulsa, Oklahoma.
2. That the Defendant Amasar is a Louisiana corporation with its principal place of business in LaFayette, Louisiana.
3. That this Court has jurisdiction in this action pursuant to 28 U.S.C. §1332 in that this is a controversy between citizens of different states and the amount in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.00.
4. That this Court has personal jurisdiction over Amasar pursuant to Title 12 Okl. Stat. 1971, §§187(a) and 1701.03(a) in that Amasar has transacted business with Oklahoma and has

committed acts within Oklahoma and otherwise maintained business relationships with Oklahoma entities all of which afford a basis for the exercise of personal jurisdiction in conformity with the United States Constitution.

5. That pursuant to an order for certain specially designed equipment, Mathey specially constructed such equipment and shipped it on April 30, 1980 to Amasar.

6. That the outstanding balance owed on the above-referenced specially designed equipment including freight charges is \$26,792.45.

7. That pursuant to an order for specially designed equipment from Amasar, Mathey specially constructed such equipment and shipped it on June 25, 1980, to the destination designated by Amasar.

8. That the outstanding balance owed on the above-referenced specially designed equipment, including freight charges, is \$21,592.35.

9. That the Defendant Amasar did promise to pay all of said account which amounts to \$48,384.80 in principal plus \$4,638.06 in accrued interest to date, of which only \$23,000 has been paid, leaving a balance owing on said account of \$30,022.86.

10. That Mathey has demanded payment of said account in full, but the Defendant Amasar has wholly failed and refused to pay the balance due on said account.

11. That all of the above facts are undisputed and consequently this case is ripe for summary judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that Mathey Manufacturing Company, have and recover judgment against the Defendant Amasar, Inc. for the sum of \$30,022.86 plus 12% interest on said amount from today's date until paid in full, plus \$60.00 for the costs of this action; plus a reasonable attorney's fee of \$7,500.00.

S/ THOMAS R. BRETT

THE HONORABLE THOMAS R. BRETT
United States District Judge

Date: May 14, 1981

AGREED AS TO FORM:



C. CLAY ROBERTS
Attorney for Amasar, Inc.

Date: May 8, 1981



CHARLES W. SHIPLEY
Attorney for Mathey
Manufacturing Company

Date: May 8, 1981

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SOONER PRODUCTS COMPANY,)
an Oklahoma corporation,)
Plaintiff,)
vs.)
PAUL McBRIDE, et al.,)

No. 81-C-31

FILED
MAY 14 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

Oral argument was heard on April 30, 1981 on the following motions:

1. Motion to Dismiss and Motion to Strike of Arch Investments, Inc., Arch Manufacturing Company, Wilbur L. Dunn, James M. Sturdivant and Lenco, Inc.;
2. Motion to Dismiss of Paul McBride and R. Dow Bonnell;
3. Motion to Dismiss of Richard D. Pittenger and Geraldine Pittenger;
4. Motion to Dismiss of Pittenger Sintered Products;
5. Motion to Dismiss of George L. Brown and Citizens Security Bank of Bixby, Oklahoma;
6. Motion to Dismiss of W. C. Sellers.

Plaintiff appeared by its attorneys, Earl W. Wolfe and Craig Tweedy. Arch Investments, Inc., Arch Manufacturing Company, Wilbur L. Dunn, James M. Sturdivant and Lenco, Inc., appeared by their attorney, Oliver S. Howard. R. Dow Bonnell appeared for himself and Richard D. Pittenger, Geraldine Pittenger and Pittenger Sintered Products. George L. Brown and Citizens Security Bank of Bixby, Oklahoma appeared by Robert Roark. W. C. Sellers appeared by Ed Parks, III. At the close of the hearing counsel for the parties advised they did not desire to submit additional briefs and the Motions were taken under advisement.

Initially the case was set for hearing on request for preliminary injunction on February 26, 1981. At the hearing various

defendants advised they had filed Motions to Dismiss. By agreement of counsel, plaintiff was given time to reply to the Motions to Dismiss, all parties agreeing the Motions to Dismiss should be determined prior to hearing the preliminary injunction. On March 19, 1981, plaintiff filed an Amended Complaint and the defendants renewed their Motions to Dismiss.

Plaintiff invokes the jurisdiction of this Court on the basis of a "Federal Question" pursuant to 28 U.S.C. §§1331, 1343, and specifically pursuant to certain provisions of the Civil Rights Act of 1871, as amended, 42 U.S.C. §§1983, 1985, 1986 and 1988. The Motions to Dismiss of all defendants are initially predicated on failure to state a claim pursuant to F.R.Civ.P. 12 (b)(6). In considering a Motion to Dismiss for failure to state a claim, the Court must accept as true the material facts alleged by plaintiff. Reynolds v. United States of America, No. 79-2068 (10th Cir., March 9, 1981), ___ F.2d ___.

42 U.S.C. §1983 CLAIM:

Critical in a §1983 action is the presence or involvement of state action. Flagg Brothers v. Brooks, 436 U.S. 149, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978).

Plaintiff attempts to show the necessary "state action" in its amended complaint by asserting certain acts and non-acts by three non-party State Court Judges. Plaintiff alleges Judge Ron Ricketts entered a Judgment on the Pleadings in a case pending before him in Tulsa County; that Judge Lynn Burris wrongfully failed to dissolve a temporary restraining order issued in Creek County litigation; and that Judge Patricia Hobel failed to direct a return of plaintiff's assets and thereby deprived plaintiff of its due process rights in litigation pending before her in Tulsa County. Argument at the hearing revealed plaintiff's main complaint appeared to be disagreement by plaintiff as to the actions taken by the State Court Judges. The conclusory allegations of the amended complaint that various private torts were committed "in concert" with a judge are not sufficient to cause the private tortfeasors to be acting under color of state law.

Two elements must be pled and proven by plaintiff to recover under §1983. Norton v. Liddell, 620 F.2d 1375, 1378-1379 (10th Cir. 1980). First, the plaintiff must prove that the defendants have deprived it of a right secured by the Constitution and laws of the United States. Second, the plaintiff must show that the defendants deprived it of the constitutional right under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory. This second element requires that the plaintiff show the defendants acted "under color of law." Adickes v. S.H. Kress and Co., 398 U.S. 144, 150, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970). See also: Norton v. Liddell, *supra*; Flagg Brothers, Inc. v. Brooks, *supra*; Clappier v. Flynn, 605 F.2d 519 (10th Cir. 1979); Lessman v. McCormick, 591 F.2d 605 (10th Cir. 1979).

In Dennis v. Sparks, _____ U.S. _____, 101 S.Ct. 183, _____ L.Ed.2d _____ (1980), a Judge's official act was the product of a corrupt conspiracy involving bribery of the Judge. The Court held "[U]nder these allegations, the private parties conspiring with the judge were acting under color of state law; and it is of no consequence in this respect that the judge himself is immune from damages liability."

The factors to be considered in determining whether an act by a judge is a "judicial" one relate to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectation of the parties, i.e., whether they dealt with the judge in his judicial capacity. Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099, 55 L.Ed.2d 231 (1978). Merely resorting to the courts and being on the winning side of a lawsuit does not make a party a co-conspirator or a joint actor with the judge. Dennis v. Sparks, *supra*.

Moreover, plaintiff must allege sufficient facts to support its legal theory of conspiracy. See Stump v. Sparkman, *supra*, 435 U.S. 349. Plaintiff has not demonstrated the existence of a significant nexus or entanglement between the absolutely immune

State Court Judges and the private parties in relation to the steps taken by each to fulfill the objects of the alleged conspiracy. Shaffer v. Cook, 634 F.2d 1259 (10th Cir. 1980).

The Court, therefore, finds plaintiff's cause of action asserted under 42 U.S.C. §1983 should be dismissed for failure to state a claim.

42 U.S.C. §1985(2)(3) and 1986 CLAIM:

In Lessman v. McCormick, 591 F.2d 605 (10th Cir. 1979), the Circuit Court of Appeals affirmed the trial court's holding that any cause under the portion of §1985(2) following the semicolon, and §1985(3) requires a colorable claim of class-based discriminatory animus and that since plaintiff's claim failed under §1985, it also failed under §1986 which is dependent on a valid cause of action under §1985. The Circuit Court specifically noted the Supreme Court of the United States, in Griffin v. Breckenridge, 403 U.S. 88, 91 S.Ct. 1790, 29 L.Ed.2d 388 (1971), had declined to "decide whether a conspiracy motivated other than by racial bias would be actionable under that section."

The Court finds there is no class-based discriminatory animus alleged and this was conceded by the plaintiff at the time of oral argument.

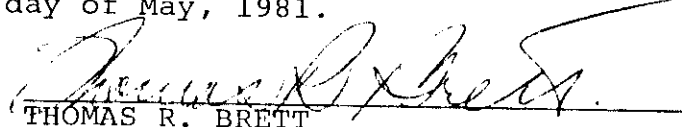
The Court, therefore, finds plaintiff has failed to state a claim under 42 U.S.C. §§1985 and 1986.

The Court having found plaintiff has failed to state a claim under the Civil Rights statutes alleged, lacks jurisdiction of the parties and the subject matter, there being no requisite diversity of citizenship.

The Court having disposed of this case by virtue of the failure to state a claim and lack of jurisdiction defenses raised by the Motions to Dismiss need not determine the other legal defenses raised by the parties.

IT IS, THEREFORE, ORDERED the Motions to Dismiss of the defendants are sustained for (i) failure to state a claim pursuant to F.R.Civ.P. 12(b)(6); and (ii) lack of jurisdiction, F.R.Civ.P.12(b)(1).

ENTERED this 14th day of May, 1981.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
MAY 12 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ZIEGFELD'S, INC., an Oklahoma
corporation,

Plaintiff,

vs.

AMERICAN FEDERATION OF MUSICIANS,
LOCAL NO. 94, and DAVID T. "TONY"
TWIST,

Defendants.

No. 80-C-3-BT

PLAINTIFF'S AND DEFENDANTS' JOINT NOTICE
AND STIPULATION OF DISMISSAL OF CIVIL ACTION

In accordance with the provisions of Federal Rules of Civil Procedure, Rule 41(a) the Plaintiff and Defendant herein, jointly give notice and stipulate to dismissal of this action herein in its entirety, including Defendants' Petition for Removal, Plaintiff's Answer to Defendants' Petition for Removal, Defendants' Answer and Counterclaim and Plaintiff's Reply to Defendants' Counterclaim and all amended pleadings or responses thereto filed by the parties.

Done this 12th day of May, 1981.

ZIEGFELD'S INC.

By Michael Belanger
Michael Belanger
Attorney for Plaintiff

AMERICAN FEDERATION OF MUSICIANS,
LOCAL NO. 94, and DAVID T. "TONY"
TWIST

By E. Bryan Henson, Jr.
E. Bryan Henson, Jr.
Chapel, Wilkinson, Riggs, Abney
& Henson
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 12 1981 *hmv*

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
THE REGIONAL METROPOLITAN)
UTILITY AUTHORITY, TULSA,)
OKLAHOMA, THE CITY OF TULSA,)
OKLAHOMA AND THE CITY OF)
BROKEN ARROW, OKLAHOMA,)
)
Defendants.)
-----)

CIVIL ACTION NO. 79-C-672-C ✓

CONSENT DECREE

A Complaint for a civil action brought by the United States of America, Plaintiff, against the Regional Metropolitan Utility Authority, the City of Tulsa, Oklahoma and the City of Broken Arrow, Oklahoma, Defendants, having been filed herein; and

WHEREAS, the Defendant RMUA has notified the Plaintiffs that it will be unable to comply with certain discharge limitations contained in National Pollutant Discharge Elimination System (NPDES) Permit No. OK0034363 issued under authority of §402 of the Clean Water Act of 1977, as amended, and therefore the Defendants are and will be in violation of 33 U.S.C. §§1342 and 1311(b); and

WHEREAS, the Plaintiff and Defendants, by their respective attorneys, having consented, without trial or adjudication of any issue of fact or law herein, to the entry of this Decree, and without this Decree constituting any evidence or admission by any party hereto with respect to any issue of fact or law herein;

NOW, THEREFORE, it is ORDERED, ADJUDGED and DECREED as follows:

I

This Court has jurisdiction over the subject matter herein and of the parties hereto pursuant to 28 U.S.C. 1345 and 33 U.S.C. 1319 for the purpose of entering into this Consent Decree.

II

The Complaint states a claim upon which relief may be granted against the Defendants pursuant to Sections 301 and 309(b) and (d) of the Clean Water Act of 1977, as amended, 33 U.S.C. Sections 1311 and 1319(b) and (d).

III

The provisions of this Consent Decree shall apply to and be binding upon the Plaintiff and upon the Defendants, their officers, directors, agents, employees, successors, and assigns and all persons, firms and corporations acting under, through, or for them, and upon those persons, firms, and corporations in active concert or participation with them.

IV

A. NPDES Permit No. OK0034363, a copy of which is attached hereto marked "Appendix A" and hereby incorporated by reference, shall remain in full and binding effect to govern the operations of the Defendants' Haikey Creek treatment facility during the effective term of this Consent Decree.

B. The pendency or outcome of any proceeding concerning the reissuance of NPDES Permit No. OK0034363 shall neither affect nor postpone the Defendants' duties and liabilities as set forth herein.

C. This Decree is not and shall not be interpreted to be a permit for the discharge of pollutants under Section 402 of the Clean Water Act of 1977, as amended, nor shall it in any way relieve the Defendants of any obligation imposed by such Act or in any permit issued thereunder, nor shall it in any way relieve the

Defendants of their obligation to comply with any other local, state, or federal law in any way related to the subject of this Consent Decree.

V

A. The Defendants are permanently enjoined and directed to construct certain additions and modifications to, and adopt certain operation and maintenance procedures at the Haikey Creek wastewater treatment facility, Tulsa, Oklahoma, as described in the memorandum attached hereto marked "Appendix B" and incorporated herein by reference. The Defendants shall construct such additions and modifications, and adopt such procedures in accordance with the following schedule:

1. Correction of Mechanical Problems

- | | |
|--|-------------------|
| a. Commence monitoring and engineering analysis of mechanical problems | August 25, 1980 |
| b. Commence identification of necessary corrective measures | September 8, 1980 |
| c. Completion of all engineering specifications and submission of report of analysis with timetable of remedial measures | October 6, 1980 |
| d. Completion of remedial measures specified in timetable of remedial measures above | December 31, 1980 |
| e. Completion of all remedial measures | As they occur |

2. Personnel Training

- | | |
|---|--------------------|
| a. Commence training of plant personnel | August 25, 1980 |
| b. Completion of all training | September 1, 1980 |
| c. Commence monitoring and analysis of personnel performance | September 15, 1980 |
| d. Commence corrective O & M procedures and additional training where necessary | October 6, 1980 |

3. Sludge Disposal

- | | | |
|----|---|-----------------|
| a. | Commence engineering analysis of disposal alternatives | August 18, 1980 |
| b. | Completion of all engineering analysis and implementation of disposal routine | October 9, 1980 |

4. Process Operations

- | | | |
|----|---|--------------------|
| a. | Commence engineering analysis of process operations and identification of necessary remedial measures | September 22, 1980 |
| b. | Commence implementation of remedial measures | October 6, 1980 |
| c. | Completion of all engineering analysis and identification of necessary remedial measures | October 20, 1980 |
| d. | Completion of remedial measures identified above | November 17, 1980 |
| e. | Completion of all remedial measures | As they occur |

5. Solids Retention Time (SRT)

- | | | |
|----|---|--------------------|
| a. | Commence engineering analysis of optimum SRT operations in one reactor | August 25, 1980 |
| b. | Commence evaluation of SRT operations in first reactor and modify where necessary | September 15, 1980 |
| c. | Commence SRT operations in second reactor | October 6, 1980 |

6. Defendants shall attain compliance with final effluent limitations set forth in NPDES Permit No. OK0034363, Special Condition 1(b), page 5 of 11 (Appendix A), on or before December 31, 1980.

B. To facilitate year-round compliance with final effluent limitations, the Defendants are further permanently enjoined and directed to construct certain additions and modifications at their Haikey Creek wastewater treatment facility, Tulsa, Oklahoma as described in the memorandum attached hereto marked "Appendix C" and incorporated herein by reference. The Defendants shall construct such additions and modifications in accordance with the following schedule:

<u>TASK</u>	<u>MILESTONE DATE</u>
1. <u>Grit Chamber</u>	
a. Execute engineering agreement and commence engineering analysis	September 12, 1980
b. Completion of all plans, specifications and contract documents	February 15, 1981
c. Execution of all purchase and construction contracts	May 1, 1981
d. Completion of all construction	December 1, 1981
e. Obtain operational level	December 31, 1981
2. <u>Lift Station Improvements</u>	
a. Execute engineering agreement and commence engineering analysis	September 16, 1980
b. Completion of all plans, specifications and contract documents	December 31, 1980
c. Execution of all purchase and construction contracts	February 15, 1981
d. Completion of all construction	November 1, 1981
e. Obtain operational level	December 31, 1981
3. <u>Drying Beds</u>	
a. Commence engineering analysis	August 25, 1980
b. Completion of all engineering specifications	October 8, 1980
c. Execution of all contracts	November 12, 1980
d. Completion of reconstruction	May 1, 1981

4. "Big Wheel" Sludge Applicator Loading Facility

- a. Commence engineering analysis November 12, 1980
- b. Completion of all engineering specifications and execution of all contracts December 31, 1980
- c. Completion of all construction May 1, 1981

C. The Defendants shall require manufacturers of its treatment equipment to proceed with manufacture and delivery as expeditiously as possible; shall assemble and construct on site any equipment as expeditiously as possible after delivery to the site; and shall commence operation of any equipment as expeditiously as possible after construction and assembly on site.

D. Within 5 working days after each milestone date established in paragraphs V(A) and (B) the Defendants shall submit a written notification to the United States Environmental Protection Agency Region VI Administrator stating whether the milestone was timely achieved. If the milestone was not timely achieved the Defendants shall submit a written report to the United States Environmental Protection Agency Region VI Administrator which shall include:

- 1. a complete description of any factors that explain the failure, including all necessary documentation;
- 2. a description of the actions taken or proposed to be taken to comply with the missed milestone;
- 3. the date by which the milestone will be achieved;
- 4. a description of any further milestone(s) that may be affected by such failure;
- 5. the date by which any affected milestone(s) will be achieved; and
- 6. the actions that could be taken to prevent violations of future milestones.

Such report shall be submitted on the 28th day of each month beginning September 28, 1980, and on the 28th day of each month thereafter until 30 days after the Defendants have completed all construction required by this Consent Decree.

VI

A. The Defendants are hereby ordered to operate the Haikey Creek facility, Tulsa, Oklahoma, during the period commencing on September 1, 1980, and ending on December 31, 1980, in compliance with the following effluent limitations:

<u>Effluent Limitations</u>	<u>30-Day Average</u>	<u>7-Day Average</u>
1. Biochemical Oxygen Demand (5-day)	30 mg/l (926 lbs/day)	45 mg/l
2. Suspended Solids	40 mg/l (1234 lbs/day)	60 mg/l

The "7-Day Average" is the arithmetic mean of the values for all effluent samples collected in a period of seven (7) consecutive days. The "7-Day Average" shall be computed on a continuous daily basis covering the discharge during the previous consecutive seven (7) days.

B. The Defendants shall monitor and record compliance with the above stated parameters on a daily basis by means of a 24 hour flow weighted composite sampling method. The sampling, monitoring, recording and analytic methods shall in all respects conform to the established requirements of the Defendants' NPDES permit.

C. In addition to the sampling and monitoring requirements of the Defendants' NPDES permit, the Defendants shall sample and/or record each of the following items on a daily basis:

1. Solids retention time (SRT) for each reactor (recorded each day and computed on a 7-day average);
2. Ambient water temperature in each reactor;
3. Total volume of sludge disposed via the "Big Wheel" sludge applicator, the sludge drying beds, and any other means utilized for sludge disposal;
4. Volatile suspended solids of the raw sewage, digested sludge, MLSS, and plant effluent.

D. On the 28th day of each month beginning September 28, 1980, and on the 28th day of each month thereafter until 30 days after the final effluent limitations have been met for 90 consecutive days, the Defendants shall submit a written report to the United States Environmental Protection Agency, Region VI Enforcement Division Director summarizing all sampling and monitoring information specified in paragraphs VI(A), (B) and (C).

VII

A. If the Defendants fail to meet any of the milestone dates set forth in paragraphs V(A) and (B) herein, then the Defendants shall pay a penalty of Five Hundred Dollars (\$500.00) for each day of such violation. Plaintiff reserves the right to take further enforcement action, including the right to seek further monetary penalties, if all required construction or adoption of procedures is not completed within 30 days after the relevant milestone date.

B. If, during the period between September 1, 1980, and December 31, 1980, the Defendants violate any interim effluent limitations established in paragraph VI(A) herein, then the Defendants shall pay a penalty of Five Hundred Dollars (\$500.00) for each day of such violation. Plaintiff reserves the right to take further enforcement action, including the right to seek further monetary penalties, for any discharge that exceeds the 7-Day Average discharge limitation set forth in paragraph VI(A) by more than 50%.

C. If, during the period beginning on the date the Defendants attain final effluent limitations through normal operating procedures or December 31, 1980, whichever is later, and ending 30 days thereafter, the Defendants violate any final effluent limitation, then the Defendants shall pay a penalty of

Five Hundred Dollars (\$500.00) for each day of such violation. Plaintiff reserves the right to seek further enforcement action, including the right to seek further monetary penalties, for any discharge that exceeds any final effluent limitation by more than 50%.

D. On the 28th day of each month beginning September 28, 1980, and on the 28th day of each month thereafter until 30 days after either the final effluent limitations have been met for 90 consecutive days or completion of all construction required by this Consent Decree, whichever is later, the Defendants shall submit a written report to the United States Environmental Protection Agency, Region VI Enforcement Division Director identifying and summarizing each violation of milestone dates and interim effluent limitations as specified in this Decree that occurred during the preceeding calendar month. If an effluent limitation has been or is being violated, then the report shall state, for each parameter violated, the amount of pollutant discharged, the date of such discharges, the percentage of the violation and the information required by 40 CFR §§122.7(1)(6) and 122.60(f). If a milestone is violated the report shall state the number of days of such violation.

E. The report specified in paragraph VII(D) shall be accompanied by the Defendants' payment for all violations that occurred during the period covered by the report, except as specified in paragraph VII(F). All payments shall be made by check payable to the Treasurer of the United States. All payments shall be mailed to the Office of United States Attorney for the Northern District of Oklahoma, United States Courthouse, 333 West Fourth Street, Tulsa, Oklahoma 74401. Each payment shall be accompanied by a written statement explaining how the total amount was computed.

F. Penalty payments for violations of milestone dates arising between September 1, 1980, and December 31, 1980, shall be withheld by the Defendants until January 15, 1981. On or before January 15, 1981, a determination shall be forwarded to the Defendants by the Enforcement Division Director of Region VI, United States Environmental Protection Agency, as to whether by December 31, 1980, the construction and adoption of procedures required by paragraph V(A) had been completed and final effluent limitations had been met through normal operating procedures. If it is determined that the construction and adoption of procedures had not been completed and final effluent limitations had not been met, then the Defendants shall make a penalty payment for the cumulative amount of all violations arising between September 1, 1980, and December 31, 1980. Payment shall be in accordance with paragraph VII(E) and delivered to the United State Attorney for the Northern District of Oklahoma within thirty (30) days after the date the Director's determination has been received by the Defendants. If it is determined that the construction and adoption of procedures had been completed and final effluent limitations had been met, then the Defendants shall not be liable for the payment of penalties as set forth in paragraph VII(A) for violations of milestone dates arising between September 1, 1980, and December 31, 1980. The determination of the Director shall be final for all purposes and shall in no way affect the Defendants' obligation to make prompt payments for all violations as set forth in paragraphs VII(D) and (E) or to expedite any other obligation under this Consent Decree.

G. The amounts duly paid pursuant to paragraph VII(F) herein shall, except as specified in paragraph VII(A), be in complete satisfaction of the Defendants' liability for civil penalties pursuant to 33 U.S.C. §1319(a) for violations of paragraph VI(A) herein occurring at the Defendants' Haikey Creek facility from September 1, 1980, through December 31, 1980.

H. Defendants shall pay a civil penalty of One Hundred Thirty Five Thousand Dollars (\$135,000) for violations of NPDES Permit OK0034363 occurring during the period from February 1, 1976, through September 1, 1980. This penalty is in complete satisfaction of the Defendants' liability for civil penalties pursuant to 33 U.S.C. §1319(a) for the violations alleged in Plaintiff's complaint occurring at the Haikey Creek facility during that period. Payment shall be made by check made payable to the Treasurer of the United States, and delivered to the United States Attorney for the Northern District of Oklahoma within forty-five (45) days after the date of the entry of this Consent Decree.

I. Defendants shall pay a civil penalty of Five Thousand Dollars (\$5,000.00) for violations of interim effluent limitations established in paragraph VI(A) herein occurring during the period from September 1, 1980, through December 31, 1980. This penalty is in complete satisfaction of the Defendants' liability for penalties assessed pursuant to paragraph VII(B) herein for violations of interim effluent limitations occurring at the Haikey Creek facility during that period. Payment shall be made by check made payable to the Treasurer of the United States, and delivered to the United States Attorney for the Northern District of Oklahoma within forty-five (45) days after the date of this Consent Decree.

VIII

The Court shall retain jurisdiction over this matter for the purpose of enabling any party to this Consent Decree to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Consent Decree, or for the modification of the terms of any of the provisions hereof, or for the enforcement or dissolution hereof, or for reviewing compliance with this Consent Decree. This Consent Decree shall terminate 30 days after the Defendants have either attained the final effluent limitations for 90 consecutive days or completed all construction required by this Consent Decree, whichever is later.

Dated and entered this 12TH day of May, 1981.

James O. Leavitt
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES DEPARTMENT
OF JUSTICE

Angus Macbeth

Angus Macbeth
Deputy Assistant Attorney General
Department of Justice

3/25/81

DATE

By

F. Patrick Barry
F. PATRICK BARRY
ATTORNEY

Pollution Control Section
Land and Natural Resources Division
Department of Justice
Washington, D.C. 20530

3/24/81

DATE

UNITED STATES ATTORNEY

By

Paula S. Ogg
PAULA S. OGG

ASSISTANT UNITED STATES
ATTORNEY
Room 460
United States Courthouse
333 West Fourth Street
Tulsa, Oklahoma 74401

3/30/81

DATE

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By *Jan Horn*
JAN HORN
ATTORNEY
U.S. Environmental Protection
Agency, Region VI

DATE 1-28-81

By *David C. Batson*
DAVID C. BATSON
ATTORNEY
U.S. Environmental Protection
Agency
Washington, D.C. 20460

DATE 2/3/81

REGIONAL METROPOLITAN UTILITY
AUTHORITY

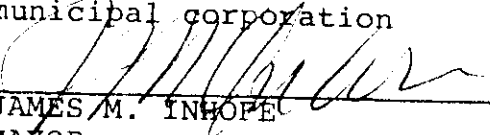
By *John P. Thomas, Jr.*
JOHN P. THOMAS, JR.
REGIONAL METROPOLITAN
UTILITY AUTHORITY
2317 South Jackson
Tulsa, Oklahoma 74107

DATE 1-19-81

By *R. James Unruh*
R. JAMES UNRUH
Special Attorney for the
Regional Metropolitan
Utility Authority
525 National Bank of Tulsa Bldg.
320 South Boston Avenue
Tulsa, Oklahoma 74103


DATE 1-19-81

CITY OF TULSA, OKLAHOMA
a municipal corporation

By 
JAMES M. INHOFE
MAYOR
City of Tulsa, Oklahoma

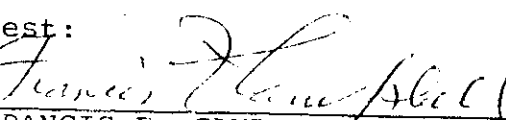
1-23-1981
DATE

Approved:

By 
NEAL E. MCNEILL
CITY ATTORNEY
City of Tulsa, Oklahoma

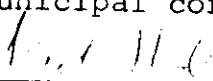
1-23-1981
DATE

Attest:

By 
FRANCIS F. CAMPBELL
CITY AUDITOR
City of Tulsa, Oklahoma
200 Civic Center
Tulsa, Oklahoma 74103

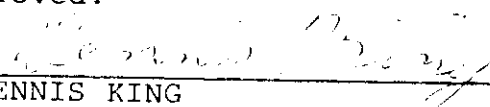
1-23-1981
DATE

CITY OF BROKEN ARROW, OKLAHOMA
a municipal corporation

By 
NICK HOOD
MAYOR
City of Broken Arrow, Oklahoma


1-19-81
DATE

Approved:

By 
DENNIS KING
ATTORNEY
City of Broken Arrow, Oklahoma
Wilburn, Knowles, and King
505 Beacon Building
Tulsa, Oklahoma 74103

1-19-81
DATE

Attest:

By 
LARRY SPURLOCK
CITY CLERK
City of Broken Arrow, Oklahoma
115 East Commercial
Broken Arrow, Oklahoma 74052

1-19-81
DATE

Appendix B

In order to facilitate compliance with NPDES Permit No. OK034363, the following measures shall be implemented:

1. Mechanical Problems

Mechanical problems shall be monitored, identified and corrected. The weirs shall be leveled as needed. Equipment operation and hydraulic conditions shall be monitored and deficiencies that hinder solids retention time (SRT) routines identified and corrected.

Any turbulent or short circuit type flow at the entrance to the return sludge parshall flume shall be eliminated by retarding flow as it exits from the turn in the trough ahead of the flume or by other measures.

Any submergence of the outlet of the parshall flume shall be eliminated by eliminating hydraulic restrictions downstream of the flume or by other measures. Deficiencies in return sludge flow measurement shall be identified and corrected.

2. Training

Adequate training of and assistance to plant operating personnel in running the operational control features of the SRT routine shall be provided by Dr. Thomas E. Wilson of Greenley and Hanson, or by an instructor with similar expertise.

The performance of plant operating personnel shall be evaluated on a monthly basis, and additional training given as required.

3. Sludge Disposal Routine

All flow from the digesters (supernatant or bottom solids) shall be discharged to either the lagoon or drying beds. No return streams shall be conveyed to the plant influent (except for underdrainage from the drying beds). All sludge shall be disposed of on site either by application from the "Big Wheels" sludge applicator or by spreading dried material from the drying beds. Sludge spread on the site shall be incorporated into the soil before the end of the day during which it is spread. Spreading operations shall be based on a 7-day per week operation unless based upon experience it is determined that a 5-day per week operation will be adequate.

Sludge spreading shall be programmed so that the average annual loading does not exceed five (5) tons of dry solids per acre. A second "Big Wheels" sludge applicator shall be provided as necessary to insure reliable sludge application.

The "Big Wheels" shall be loaded from a filling arrangement located at the existing sludge lagoon. The lagoon shall be kept drawn down at all times to the minimum level possible which would still permit loading of the "Big Wheels". The lagoon shall be used as the location for discharging bottom solids from the digestion tanks and as a transfer facility from which to load the "Big Wheels".

4. Process Operations

a. Return Sludge Flow Measurement

Flow measurements shall be made by manually recording depth on a routine basis. Automatic flow measurement and recording shall be implemented as required.

b. Waste Sludge Measurement and Control

A variable speed pump and meter shall be installed as needed to transfer sludge from the clarifier trough to the digestion compartment. The digester withdrawal arrangement shall be monitored and modified as needed. All sludge withdrawn from the treatment process shall be quantified as to volume and solids content.

c. Oxygen Consumption

Measuring equipment to determine the amount of oxygen supplied to reactors and digesters shall be installed as needed.

d. Clarifier Sludge Withdrawal

The capacity of the air lift system shall be increased by modification of the piping arrangement, new compressors, or a combination thereof as needed.

5. SRT Operations

SRT control operations shall be initiated in the plant units using presently available return sludge capacity and metering and sludge wasting techniques. SRT operations shall be evaluated and modified as necessary. Operational control tests as summarized in Exhibit No. 4 to Greenly and Hanson's "Memorandum on Short Term Program for Achieving Compliance with NPDES Permit Effluent Limits" dated August 14, 1980, shall be conducted by plant operators. Uniform recording, reporting, and control procedures shall be established so that the necessary data is available for the execution of consistent SRT routines during each operating shift. Laboratory tests shall be run on a daily basis (including weekends).

Appendix C

1. Grit Chamber

A grit removal system shall be designed and constructed to provide a flow capability of 2 to 2 1/2 times the average annual design flow. The system shall include a "Detritor" type tank (with rotating scrapper), gritpump, cyclone separator, rake classifier and all related piping or an equivalent system.

2. Lift Station Improvements

Present pumping system shall be redesigned and modified to provide a flow capability of 2 to 2 1/2 times the average annual design flow. Such modification shall include the adaption of all pumps for variable speed flow capability and the installation of an additional variable speed pump or replacement of an existing pump to insure maintenance of the specified flow capability. The modified pumping system shall be designed so as to insure a steady flow without surges to the reactors at all times regardless of raw sewage inflow rate.

3. Drying Beds

All drying beds shall be modified by repairing or replacing drains and media as required. The present timber dividing walls shall be replaced with walls of reinforced concrete construction or creosote treated timber of sufficient design to prevent seepage between beds. Engineering fabric shall be placed over any soft subsurface sands to prevent degradation of the bottom media layer. A maximum of five beds shall be out of service at any one time. The beds shall be used for digester bottom solids or supernatant and all material shall be removed for land application as soon as it is dry enough to lift.

4. "Big Wheel" Sludge Applicator Loading Facility

A hardtop surface road and loading area shall be designed and constructed to insure all weather access of the "Big Wheel" sludge applicator to the sludge lagoon. Such loading area shall be of such size and proximity to the lagoon as to permit adequate "Big Wheel" loading and area washdown.

EXHIBIT A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VI
1600 PATTERSON
DALLAS TEXAS 75201

Permit No. OK0034363

Application No. OK0034363

AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq.; the "Act"),

The Regional Metropolitan Utility Authority -
South Arkansas River

is authorized to discharge from a facility located at

Latitude: 35 degrees; 56 minutes; 30 seconds N
Longitude: 95 degrees; 50 minutes; 57 seconds W
in Tulsa County

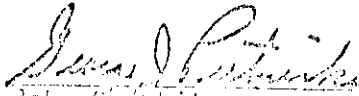
to receiving waters named Arkansas River

in accordance with effluent limitations, monitoring requirements and other conditions set forth hereinafter.

This permit shall become effective on February 1, 1976

This permit and the authorization to discharge shall expire at midnight, January 2, 1981.

Signed this 29th day of October, 1975

for 
John E. White
Regional Administrator

General Conditions

1. Discharge Limitations

a. All discharges authorized herein shall be consistent with the terms and conditions of this permit.

b. The discharge of any pollutant more frequently than, or at a level in excess of, that identified and authorized by this permit, shall constitute a violation of the terms and conditions of this permit. Such a violation may result in the imposition of civil and/or criminal penalties as provided for in Section 303 of the Act.

c. Facility modifications, additions, and/or expansions that increase the plant capacity must be reported to the permitting authority and this permit then modified or re-issued to reflect such change.

d. Any change in the facility discharge, including any new significant discharge or significant changes in the quantity or quality of existing discharges to the treatment system that will result in new or increased discharges of pollutants must be reported to the permitting authority. Modifications to the permit may then be made to reflect any necessary changes in permit conditions, including any necessary effluent limitations for any pollutants not identified and limited herein. In no case are any new connections, increased flows, or significant changes in influent quality permitted that will cause violation of the effluent limitations specified herein.

2. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the following:

a. Violation of any terms or conditions of this permit;

b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or

c. A change in any condition that requires either a temporary suspension or permanent elimination of the permitted discharge.

3. This permit shall be revised or modified in accordance with the following circumstances:

a. Modification of Water Quality Standards which affect the conditions of this permit.

b. If a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic

pollutant which is present in the discharge authorized herein and such standard or prohibition is more stringent than any limitation upon such pollutant in this permit.

4. The permittee shall allow the head of the State water pollution control agency, the Regional Administrator, and/or their authorized representatives, upon the presentation of credentials:

a. To enter upon the permittee's premises or other premises under the control of the permittee, where an effluent source is located or in which any records are required to be kept under the terms and conditions of this permit;

b. To have access to and copy at reasonable times any records required to be kept under the terms and conditions of this permit, or the Act;

c. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;

d. To sample at reasonable times any discharge of pollutants; or

e. To perform at reasonable times an operation and maintenance inspection of the permitted facility.

5. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations; nor does it obviate the necessity of obtaining State or local assent required by law for the permitted discharge.

6. This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.

7. This permit does not authorize or approve any agriculture, silviculture, or aquaculture project in connection with wastewater reuse.

8. The Regional Administrator shall from time to time review the terms and conditions of this permit and if in his opinion changes are justified, modification to the permit may then be made in accordance with the appropriate regulation procedure to reflect any necessary changes in permit terms or conditions.

9. Solids Disposal

Collected screenings, slurries, sludge, and other solids shall be disposed of in such a manner as to prevent entry of those wastes (or runoff from the wastes) into navigable waters or their tributaries.

10. Electric Power Failure

The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures either by means of alternate power sources, standby generators or retention of inadequately treated effluent. Should the treatment works not include the above capabilities at time of permit issuance, the permittee must furnish within 120 days to the permitting authority, for approval, plan for such facilities and an implementation schedule for their installation.

11. Prohibition of Bypass of Treatment Facilities

The diversion or bypass of any discharge from facilities utilized by the permittee to maintain compliance with the terms and conditions of this permit is prohibited, except (i) where unavoidable to prevent loss of life or severe property damage, or (ii) where excessive storm drainage or runoff would damage any facilities necessary for compliance with the terms and conditions of this permit. The permittee shall within 72 hours notify the permit issuing authority in writing of each such diversion or bypass.

12. Change in Control or Ownership of Facility

In the event of any change in control or ownership of facilities from which the authorized discharges emanate, the permittee shall notify the succeeding owner or controller of the existence of this permit by letter, a copy of which shall be forwarded to the State water pollution control agency and the Regional Administrator.

13. Severability of Conditions

The conditions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

14. Except for data determined to be confidential under Section 308 of the Act, all monitoring reports required by this permit shall be available for public inspection at the office of the State water quality control agency and the Regional Administrator. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in Section 302 of the Act.

15. Nothing in this permit shall be construed to preclude the institution of any legal action nor relieve the permittee from any responsibilities, liabilities or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Act.

16. Except as provided in General Condition 11 above on by-passing, nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for non-compliance.

Effluent Limitations

a. Interim Effluent Limitations

During the period beginning on the effective date of this permit and lasting through January 31, 1976, the permittee is authorized to discharge subject to the following effluent limitations:

The arithmetic average of the daily flows of effluent discharged from the waste water treatment facility for any month shall not exceed 0 million gallons per day (mgd). Nor shall the maximum discharge on any given day exceed 0 mgd.

<u>Effluent Concentrations</u>			<u>Effluent Loading</u>
Unit of	30-day	7-day	30-day Average
Measurement	Average	Average	(100g)
Biochemical Oxygen Demand (5-day)....	mg/l	0	0
			0 kg/day 0 lbs/day
Suspended Solids..	mg/l	0	0
			(TSS)
Fecal Coliform Bacteria.....	Number/100 ml	0	0
			0 kg/day 0 lbs/day

b. Final Effluent Limitations

During the period beginning February 1, 1976 and lasting through five (5) years from the effective date of this permit, the permittee is authorized to discharge subject to the following effluent limitations:

The arithmetic average of the daily flows of effluent discharged from the wastewater treatment facility for any month shall not exceed 3.7 million gallons per day (mgd). Nor shall the maximum discharge on any given day exceed 6.6 mgd.

	<u>Effluent Concentrations</u>			<u>Effluent Loading</u>
	<u>Unit of</u> Measurement	<u>30-day</u> Average	<u>7-day</u> Average	<u>30-day Average</u> (BOD ₅)
Biochemical Oxygen Demand (5-day)....	mg/l	30	45	420.3 kg/day 925.7 lbs/day
Suspended Solids..	mg/l	30	45	(TSS)
Fecal Coliform Bacteria.....	Number/100 ml	200	400	420.3 kg/day 925.7 lbs/day

- c. The following definitions apply to b. above:

(1) The 30-day average, other than for fecal coliform bacteria, is the arithmetic mean of the values for all effluent samples collected in a period of 30 consecutive days. The 30-day average for fecal coliform bacteria is the geometric mean of the values for all effluent samples collected in a period of 30 consecutive days.

(2) The 7-day average, other than for fecal coliform bacteria is the arithmetic mean of the values for all effluent samples collected in a period of 7 consecutive days. The 7-day average for fecal coliform bacteria is the geometric mean of the values for all effluent samples collected in a period of 7 consecutive days.

(3) A 24-hour composite sample consists of several effluent portions collected over equally spaced intervals in a 24-hour period and composited according to flow. For fecal coliform bacteria, a sample consists of one effluent grab portion collected during a 24-hour period at peak loads.

d. The pH of the effluent shall not be less than 6.0 nor greater than 9.0 at any time. The pH limitation is not subject to averaging.

e. The permittee shall not discharge floating solids nor shall the discharge of the effluent result in the existence of visible foam beyond the immediate vicinity of the outfall(s).

2. Monitoring, Recording and Reporting

a. Monitoring - The permittee shall effectively monitor the operation and efficiency of all treatment and control facilities and the quantity and quality of the treated discharge.

(1) Samples for effluent analysis shall be collected immediately following the last treatment unit.

(2) Monitoring shall be in accordance with Schedule E as follows:

Flow	BOD ₅ mg/l	Total Suspended Solids, mg/l	pH	Fecal Coliform
The daily flow measured by a totalizing meter	One each week	One each week	One per week	One each week

Collecting of Samples

The laboratory tests excepting the fecal coliform test shall be made on a composite sample made up of six portions collected no closer together than one hour and with the first sample collected no earlier than 10.00 a.m. If any sample analysis required by the foregoing monitoring schedule exceeds the effluent limitations specified in Special Condition No. 1, the permittee shall report the excursion to the Regional Administrator within three days. The Regional Administrator may at his discretion require additional sampling, reporting or monitoring including but not limited to the taking of at least one twenty-four-hour composite sample and/or increased frequency of sampling. Any 30-day or 7-day average reported in the required monitoring report, which is in excess of the effluent limitation specified in Special Condition No. 1, shall constitute evidence of violation of such effluent limitation and of this permit.

(3) Monitoring information required by this permit shall be summarized monthly and recorded on Discharge Monitoring Report form EPA 3320-1.

b. Reporting - The permittee shall make and maintain records of all information resulting from the monitoring activities required by this permit.

(1) The permittee shall record for each measurement or sample taken pursuant to the requirements of this permit the following information: (a) the date, exact place and time of sampling; (b) the dates analyses were performed; (c) who performed the analyses; (d) the analytical techniques or methods used; and (e) the results of all required analyses, (f) the instantaneous flow at grab sample collections.

(2) If the permittee monitors any parameters more frequently than is required by this permit, he shall include the results of such monitoring in the calculation and reporting of the values required in the Discharge Monitoring Report form (EPA Form 3320-1 (10-72)). Such increased frequency shall be indicated on the Discharge Monitoring Report form.

(3) The permittee shall retain for a minimum of three years all records of monitoring activities and results including all records of calibration and maintenance of instrumentation and original recording charts from continuous monitoring instrumentation. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the State water pollution control agency or the Regional Administrator.

c. Report of Monitoring Information - Monitoring information required shall be submitted on Discharge Monitoring Report forms EPA 3320-1. Each quarterly submittal (see next paragraph) shall include separate forms for each month of the reporting period.

(1) Duplicate original Discharge Monitoring Report forms, for each month of the reporting period, properly completed and signed (as per paragraph c below), must be submitted quarterly to:

(a) Chief, Water Quality Services
Oklahoma Department of Health
NE. 10th and Stonewall Streets
Oklahoma City, Oklahoma 73105

(b) Environmental Protection Agency
1600 Patterson, Suite 1100
Dallas, Texas 75201

(c) Each submitted Discharge Monitoring Report shall be signed by a duly authorized agent of the Regional Metropolitan Utility Authority.

(d) A report Form EPA 3320-1 shall be submitted for each month. If no flow occurs for a month or part of a month then a report shall be submitted stating "No Discharge" as applicable.

(2) The first Discharge Monitoring Reports shall be submitted by April 15, 1976 and shall cover the period from effective date of the permit through March 31, 1976. Thereafter reporting periods shall end on the last day of the

months March, June, September and December, unless requested by the Regional Administrator to be submitted more frequently. The permittee shall submit a Discharge Monitoring Report postmarked no later than the twenty-eighth day of the month following each completed reporting period.

(3) The minimum and maximum values called for on EPA form 3320-1 shall be the lowest and highest daily values determined during the month.

(4) Other measurements of oxygen demand (e.g., TOC and COD) may be substituted for five-day Biochemical Oxygen Demand (BOD₅) where the permittee can demonstrate long-term correlation of the method with BOD₅ values. Details of correlation procedures employed must be submitted and prior approval granted by the permitting authority for this procedure to be acceptable. Data reported must also include evidence to show that the proper correlation continues to exist after approval.

(5) Guidelines establishing test procedures for the analysis of pollutants, pursuant to Section 304(g) of the Federal Water Pollution Control Act, as amended, were promulgated on October 3, 1973 and published in the Federal Register under Title 40 Part 135, on October 16, 1973. All sampling and analytical methods used to meet the monitoring requirements specified above shall conform to these guidelines. If the Title 40 Part 135 guidelines do not specify test procedures for any pollutants required to be monitored by this permit, sampling and analytical methods used to meet the monitoring requirements specified in this permit shall, unless otherwise specified by the State water pollution control agency or Regional Administrator, conform to the latest edition of the following references:

(a) Standard Methods for the Examination of Water and Wastewater, American Public Health Association, New York, New York 10019.

(b) A.S.T.M. Standards, Part 23, Water; Atmospheric Analysis, American Society for Testing and Materials, Philadelphia, Pennsylvania 19103.

(c) Methods for Chemical Analysis of Water and Wastes, Environmental Protection Agency Water Quality Office, Analytical Quality Control Laboratory, NERC, Cincinnati, Ohio 45268.

(6) The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals frequent enough to insure accuracy of measurements and shall insure that both calibration and maintenance activities will be conducted.

(7) Failure to submit any report or information required by this permit shall constitute a violation of this condition and a violation of Section 303(a) of the Federal Water Pollution Control Act of 1972.

3. Non-compliance with Effluent Limitation

a. If for any reason, other than those specified under general condition 11 above, the permittee does not comply with or will be unable to comply with any effluent limitation specified in this permit, the permittee shall provide the State water quality agencies and the Regional Administrator with the following information in writing within five days of becoming aware of such condition:

(1) A description of the non-complying discharge including its impact upon the receiving waters.

(2) Cause of non-compliance.

(3) Anticipated time the condition of non-compliance is expected to continue, or if such condition has been corrected, the duration of the period of non-compliance.

(4) Steps taken by the permittee to reduce and eliminate the non-complying discharge.

(5) Steps to be taken by the permittee to prevent recurrence of the condition of non-compliance.

b. Permittee shall take all reasonable steps to minimize any adverse impact to navigable waters resulting from non-compliance with any effluent limitation specified in this permit.

4. Compliance Schedule and Conditions

a. Facility Operation and Quality Control Compliance Program

(1) All waste collection, control, treatment and disposal facilities shall be operated in a manner consistent with the following:

(a) At all times, all facilities shall be operated as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants.

(b) The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

(c) Maintenance of treatment facilities that results in degradation of effluent quality shall be scheduled during non-critical water quality periods and shall be carried out in a manner approved by the permitting authority.

(2) The permittee shall submit the following information 90 days from the effective date of the permit to demonstrate the adequacy of present treatment practices:

(a) A schematic drawing of all waste treatment units showing flow pattern; flow (maximum and average) and load capacities of each unit; bypass arrangements (as may exist) and point of discharge.

(b) A location map or drawing showing the latitude-longitude of each discharge point. Identify the receiving streams and the path of flow from those streams to a major waterway.

(c) A design analysis which describes the capability of the existing treatment facilities to produce an effluent which will meet conditions of this permit throughout the term of the permit. This analysis must identify the effluent quality that could reasonably be expected from existing facilities with present loading and projected future loadings at one-year increments. This analysis must also identify any improvements needed in staffing, operation, maintenance or equipment replacement to achieve and maintain compliance, the point in time when the improvements are needed.

DEFINITIONS

All definitions contained in Par. 502 of the Act shall apply to this permit and are incorporated herein by reference. Additional definitions of words or phrases used in this permit are as follows:

1. The term "Act" means the Federal Water Pollution Control Act, as amended, Public Law 92-500 (33 USC 1251 et seq).
2. The term "Environmental Protection Agency" means the U. S. Environmental Protection Agency.
3. The term "Administrator" means the Administrator of the U. S. Environmental Protection Agency.
4. The term "Regional Administrator" means one of the Regional Administrators of the U. S. Environmental Protection Agency.
5. The term "National Pollutant Discharge Elimination System" (hereinafter referred to as "NPDES") means the system for issuing, conditioning, and denying permits for the discharge of pollutants from point sources into the navigable waters, the contiguous zone, and the oceans, by the Administrator of the Environmental Protection Agency pursuant to section 402 of the Federal Water Pollution Control Act, as amended.
6. The term "applicable effluent standards and limitations" means all State and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.
7. The term "applicable water quality standards" means all water quality standards to which a discharge is subject under the Act and which have been (a) approved or permitted to remain in effect by the Administrator following submission to him pursuant to section 303(a) of the Act, or (b) promulgated by the Administrator pursuant to section 303(b) or 203(c) of the Act.
8. The term "sewage" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes.
9. The term "sewage sludge" shall mean the solids and precipitates separated from wastewater by unit processes.
10. The term "treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 201 of the Act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers,

sewage collection systems, pumping, power, and other equipment, and their appurtenances; extension, improvement, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment.

11. The term "grab sample" means an individual sample collected in less than 15 minutes.

12. The term "permitting authority" means the State water quality control agency or the Environmental Protection Agency, who physically issues the permit.

Permit No. OK0004363 for NPDES Authorization to Discharge to waters of the United States.

The applicant's mailing address is: The Regional Metropolitan Utility
Authority-South Arkansas River
2317 South Jackson Street
Tulsa, Oklahoma 74107

The discharge is made into Arkansas River, a water of the United States which is classified for emergency water supply, fish and wildlife propagation, agriculture, cooling water, assimilation of waste, secondary contact recreation, and aesthetics, and is located on the water at:

Latitude: 35 degrees; 56 minutes; 30 seconds N
Longitude: 95 degrees; 50 minutes; 57 seconds W
in Tulsa County

A fact sheet is attached. The applicant's activities, under the standard industrial classification (SIC) code 4952 which result in the existing discharge are municipal wastewater treatment operations.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PROFESSIONAL INVESTORS
CORPORATION, a Delaware
Corporation,

Plaintiff,

vs.

VICTOR PALMIERI AND COMPANY,
INCORPORATED, et al.,

Defendants.

No. 81-C-80-E ✓

FILED

MAY 11 1981

Jack C. Silver, Clerk
U.S. DISTRICT COURT

O R D E R

The Court has before it for consideration Motions to Dismiss by Defendants Victor Palmieri and Company, Inc. (Palmieri), Clift C. and Dorothy P. Lane (the Lanes) and, individually, Howard McDougall, Robert J. Baker, Thomas F. O'Malley, Loren W. Robbins, Earl L. Jennings, Jr., Harold J. Yates, Marion M. Winstead, and R. V. Pulliam, Sr., in their capacities as the Trustees of the Central States, Southeast and Southwest Areas Pension Fund (the Trustees).

Defendant Palmieri's Motion to Dismiss is based on the grounds of (1) failure to state a claim upon which relief can be granted, pursuant to Fed.R.Civ.P. 12(b)(6) and (2) failure to name an indispensable party in the action, pursuant to Fed.R.Civ.P. 12(b)(7). Defendant Trustees' Motion to Dismiss is premised on lack of valid service of process and a consequent lack of jurisdiction by this Court, pursuant to Fed.R.Civ.P. 12(b)(4) and (5). The Defendant Lanes have moved for dismissal pursuant to Fed.R.Civ.P. 12(b)(2) alleging lack of jurisdiction of this Court over their persons.

This is an action for specific performance and in the alternative damages brought by Professional Investors Corporation (Plaintiff), a Delaware Corporation having its principal place of business in Tulsa, Oklahoma, upon an option agreement for the purchase of certain shares of stock in United Founders Life Insurance Company (UFLIC), an Oklahoma insurance company. The shares in question were owned by the Central States, Southeast and Southwest Areas Pension Fund (the Fund), which has its situs in Washington, D.C.

The Plaintiff alleges that the Trustees designated Palmieri, a

California corporation having its principal place of business in Washington, D.C., as asset manager and agent for the Fund. As such, Palmieri had exclusive power to sell or otherwise dispose of the stock involved in this lawsuit, approximately 27.5% of the United Founders Life shares, also known as the "Palmieri shares". On August 21, 1980, the Fund, the Trustees and Palmieri entered into an option agreement with Plaintiff to sell the Palmieri shares at a price of \$2.60 per share. Under this agreement, Plaintiff had the exclusive right to purchase these shares until December 31, 1980. The option agreement further provided that it could be revoked by the Trustees and Palmieri for "good reason" at any time after December 12, 1980, but it also provided that this revocable feature could be nullified provided Plaintiff made certain payments, the first one to be due on December 12, 1980.

Plaintiff alleges that on December 16, 1980, Palmieri sold 400,000 of the Palmieri shares to Defendant Financial Industries Corporation (FIC), an Ohio corporation with its principal place of business in Austin, Texas. Palmieri further gave FIC an option on the remaining Palmieri shares at \$2.60 per share. On January 21, 1981, FIC entered into an option agreement with the Lanes, residents and citizens of Arkansas, assigning them its rights to the remaining Palmieri shares.

In its first claim for relief, Plaintiff alleges that certain misrepresentations by agents of Palmieri induced Plaintiff into making its payment to extend the option feature of its agreement with the Trustees after the December 12, 1980 deadline contained in the agreement. When Palmieri did in fact receive the payment from Plaintiff, they refused to accept it and instead revoked Plaintiff's option. In the meantime, Palmieri and the Trustees sold the Palmieri shares plus an option to purchase to FIC who in turn sold the option to the Lanes. It is Plaintiff's contention that Palmieri, because of its actions, should be estopped from revoking its prior option negotiated with Plaintiff. Plaintiff requests specific performance of the option agreement by Palmieri, the Fund and the Trustees and also that the Palmieri-FIC agreement and the FIC-Lane agreement be declared void

ab initio or else a constructive trust be imposed upon the shares owned by FIC. In the alternative, Plaintiff seeks to recover the difference between its purchase price of the Palmieri shares and the market value of those shares, the sum of \$1,458,441.50, as damages.

In its second claim for relief, Plaintiff is seeking recovery of certain costs which it claims it was entitled to under the option agreement because of the revocation of that agreement and subsequent sale of the Palmieri shares, for a total of \$1,657,441.50.

Plaintiff's third claim, which sought injunctive relief, has now been withdrawn from this action.

MOTION TO DISMISS OF DEFENDANT PALMIERI:

It is well settled that before granting a motion to dismiss for failure to state a claim the Court must be convinced to a certainty that "the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957); accord: American Home Assurance Co. v. Cessna Aircraft Co., 551 F.2d 804, 808 (Tenth Cir. 1977); Dewell v. Lawson, 489 F.2d 877, 880 (Tenth Cir. 1974); Town of Freedom, Okla. v. Muskogee Bridge Co., Inc., 466 F.Supp. 75, 78 (W.D. Okla. 1978).

Furthermore for purposes of this motion the Court is required to accept as true the allegations contained in the Complaint and to construe them in the light most favorable to the Plaintiff. Schuer v. Rhodes, 416 U.S. 232, 235 (1974); Brian v. Stillwater Board of Realtors, 578 F.2d 1319, 1321 (Tenth Cir. 1977); Oplin v. Ideal National Insurance Co., 419 F.2d 1250, 1255 (Tenth Cir. 1969), cert. denied, 397 U.S. 1074 (1970); Hartford Accident and Indemnity Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 74 F.R.D. 357, 358 (W.D. Okla. 1976).

Bearing these requirements in mind, the Court has reviewed the allegations contained in Plaintiff's Petition and finds the following facts to be relevant. The Plaintiff entered into an option agreement with the Trustees in August of 1980 to purchase the Palmieri shares. This option agreement, a copy of which is attached to Plaintiff's Petition as Exhibit A, expressly provided that Defendant Palmieri was

in fact the investment manager of the stock in question with sole power to dispose of the stock. It is apparent and is admitted by Plaintiff in his Complaint that this option agreement which was negotiated by Palmieri was undertaken by Palmieri in its representative capacity and as agent for and on behalf of the Trustees and the Fund. Plaintiff has alleged that the actions of Palmieri wrongfully prevented Plaintiff from exercising its option to purchase the agreed upon shares and therefore Palmieri should be held individually liable on the contract agreement between Palmieri's principal, the Trustees, and Plaintiff.

The rule is well established in Oklahoma that a contract made with a known agent who is acting within the scope of his authority for a disclosed principal is the contract of the principal alone. Wiley v. Safeway Stores, Inc., 400 F.Supp. 653, 655 (N.D. Okla. 1975); Shultz v. Commercial Standard Insurance Co., 297 F.Supp. 1154, 1156 (W.D. Okla. 1969); Moran v. Loeffler-Greene Supply Co., 316 P.2d 132, 137 (Okla. 1957). This rule applies unless it clearly appears that the agent intended to assume personal liability. Moran v. Loeffler-Greene Supply Co., supra.

The above stated rule applies in cases involving specific performance. In Fry v. Penn Mutual Life Insurance Co., 195 Okla. 507, 159 P.2d 550, 552 (1945) the Oklahoma Supreme Court stated:

Where a person acts merely as agent for one of the parties to the transaction out of which the suit for specific performance arose, the principal is the necessary and proper party to the suit, and the agent ordinarily is not a necessary or proper party thereto even though he is a party to the contract.

There has been no showing here that Palmieri intended to bind itself personally. Instead, it appears that all actions taken by Palmieri and complained of by Plaintiff were undertaken in Palmieri's representative capacity as agent for the Trustees. Since Palmieri cannot be held liable for actions undertaken within the scope of its authority for its disclosed principal, the Trustees, Plaintiff has failed to state a sufficient claim upon which relief can be granted against the Defendant Palmieri. Accordingly, Palmieri's Motion to Dismiss should be and is hereby sustained and Defendant Palmieri is

dismissed from this action.

Since the Court has reached this conclusion, it is not necessary to address the additional grounds of Palmieri's Motion to Dismiss.

MOTION TO DISMISS OF TRUSTEES:

Since the time the Trustees filed their Motion, valid service has been obtained upon them. This motion is therefore moot and needs no further consideration.

MOTION TO DISMISS OF LANES:

The Lanes have argued in their motion and supporting brief that they have had insufficient minimum contacts with the State of Oklahoma for it to exercise in personam jurisdiction in this diversity action. The Lanes have stated in their affidavit, attached to their Motion to Dismiss, that they have not "traveled to or entered" the State of Oklahoma in connection with any matters set forth in the Complaint and that all related transactions have taken place outside the state. Plaintiff on the other hand contends that the Lanes' negotiations to obtain stock in UFLIC, which included at least one trip by Mr. Lane to Oklahoma, can serve as the basis for the exercise of in personam jurisdiction over the Lanes.

In a diversity case such as this, the Court will look to the applicable state law to determine the basis, if any, for exercise of personal jurisdiction over a non-resident defendant. Henderson v. University Associates, Inc., 454 F.Supp. 493, 494 (W.D. Okla. 1977); CMI Corp. v. Costello Construction Corp., 454 F.Supp. 497, 499 (W.D. Okla. 1977); Standard Life & Accident Insurance Co. v. Western Finance Inc., 436 F.Supp. 843, 845 (W.D. Okla. 1977).

The test for exercising long arm jurisdiction in Oklahoma involves the analysis of two distinct questions: (1) is the exercise of jurisdiction authorized by statute and, if so, (2) is the exercise of jurisdiction consistent with the constitutional requirements of due process. Lockett v. Bethlehem Steel Corp., 618 F.2d 1373, 1385 (Tenth Cir. 1980); Timberlake v. Summers, 413 F.Supp. 708, 710 (W. D. Okla. 1976).

Oklahoma's "long arm" statutes are found at 12 Okla.Stat. §§187 and 1701.03. Section 187 provides in pertinent part:

(a) any person, ... who does or who has done, any of the acts hereinafter enumerated, whether in person or through another submits himself, or shall have submitted himself, and if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising, or which shall have arisen, from the doing of any said acts: (1) the transaction of any business within this State; (2) the commission of any act within this State.

Section 1701.03 provides as follows:

(a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action or claim for relief arising from the person's:

(1) transacting any business in this state.

The statutes quoted, supra, indicate that the transaction of any business within the State of Oklahoma, or the commission of any act within the state are events which will give rise to the authorization for the exercise of in personam jurisdiction. It is settled in Oklahoma that even a single contact may suffice to authorize the exercise of in personam jurisdiction. In B. K. Sweeny Co. v. Colorado Interstate Gas Co., 429 P.2d 759 (Okla. 1967), the Court stated:

Absence of multiple acts within the state is not necessarily fatal to the exercise of state power ... The state may reach non-resident defendants in suits growing out of acts or transactions which have created "minimum contacts" with the forum state, however, limited or transient such contacts may be.

429 P.2d at 762.

In the instant case, Plaintiff has asserted that the Lanes made at least one trip to Oklahoma and also communicated with people in Oklahoma regarding the stock in question. The Lanes have not controverted these assertions. Instead, they contend these incidents cannot be determinative of the question because they do not form the basis of Plaintiff's cause of action. This Court finds, however, that these actions are related and can provide a statutory basis for jurisdiction under Oklahoma law.

Since the first question has been answered in the affirmative,

the only question remaining is whether the exercise of jurisdiction is permitted within the confines of due process.

The test to be applied is well known. The Defendant must have minimum contacts with the forum such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." Worldwide Volkswagen Corp. v. Woodson, 100 S.Ct. 559, 561 (1980), _____ U.S. _____ (1980). Shaffer v. Heitner, 433 U.S. 186 (1977); International Shoe Co. v. Washington, 326 U.S. 310 (1945). This test offers only general guide lines to be applied to the facts of each case. It is not a "formula automatically determinative of every case." Barnes v. Wilson, 580 P.2d 991, 994 (Okla. 1978). In Kulko v. California Superior Court, 436 U.S. 84 (1978) the Supreme Court stated:

Like any standard that requires a determination of "reasonableness," the "minimum contacts" test of International Shoe is not susceptible of mechanical applications; rather, the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present. Hanson v. Denckla, 357 U.S. 235, 246 (1958). We recognize that this determination is one in which few answers will be written "in black and white." The grays are dominant and even among them the shades are enumerable." Eston v. Eston, 334, U.S. 541, 545 (1948).

436 U.S. at 92.

It is clear that the Oklahoma long arm statutes are intended to extend the jurisdiction of Oklahoma courts over non-residents to the outer limits permitted by the due process requirements of the United States Constitution. Burchett v. Bardahl Oil Co., 470 F.2d 793, 797 (Tenth Cir. 1972); Jem Engineering and Manufacturing Inc. v. Toomer Electrical Co., 413 F.Supp. 481, 484 (N.D. Okla. 1976); Glidewell Motors Inc. v. Pate, 577 P.2d 1290, 1290, 1291 (Okla. 1978); Hines v. Clendenning, 465 P.2d 460, 462 (Okla. 1970).

In weighing the facts of the case to determine whether the requirements of due process are met, the Court must consider the totality of contacts between the non-resident defendant and the State of Oklahoma. Acme Equipment Co. Inc. v. Metro Auto Auction of Kansas City, Inc., 484 F.Supp. 219, 221 (W.D. Okla. 1979); Federal National Bank & Trust Co. of Shawnee v. Moon, 412 F.Supp. 644, 646

(W.D. Okla. 1976); Northwest Animal Hospital, Inc. v. Earnhardt, 444 F.Supp. 10, 12 (W.D. Okla. 1977); Crescent Corp v. Martin, 443 P.2d 111, 115 (Okla. 1968).

Bearing in mind the limited nature of the material presented to the Court in conjunction with this motion, the Court is of the opinion that Plaintiff has met its burden of showing, at least prima facie, the existence of in personam jurisdiction over the Defendant Lanes. Upon consideration of the totality of the contacts between these Defendants and the State of Oklahoma, the Court concludes that there are sufficient contacts so as to constitute a basis for this Court's exercise of in personam jurisdiction over the Defendants consistent with the due process requirements of the United States Constitution. This determination is subject to reconsideration when this case is heard on the merits. Accordingly, Defendant Lanes' Motion to Dismiss should be overruled without prejudice.

IT IS THEREFORE ORDERED That Palmieri's Motion to Dismiss should be and the same is hereby sustained.

IT IS FURTHER ORDERED That the Trustee's Motion to Dismiss is moot and need not be considered.

IT IS FURTHER ORDERED That the Lanes' Motion to Dismiss be and the same is hereby overruled. These Defendants are ordered to respond to Plaintiff's Complaint within twenty (20) days.

IT IS SO ORDERED this 11TH day of May, 1981.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FREDERICK FRANCIS THOMAS,

Plaintiff,

vs.

CHARLES WILLIAMS, et al.,

Defendants.

No. 80-C-620-C ✓

FILED

MAY 11 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

Now before the Court for its consideration is the motion of the defendants to dismiss Count III of plaintiff's complaint.

On March 24, 1981, the defendants moved for summary judgment on Counts I and II of the complaint. No response was made by plaintiff, and on April 14, 1981, this Court entered an order granting summary judgment to defendants as requested. Defendants now move for summary judgment as to Count III of the complaint. Plaintiff alleges in Count III that defendants deprived him of his alleged constitutional rights to trial in the county of arrest and his right to aid of counsel in the county of arrest. Defendants allege that there is no requirement under the Uniform Extradition Act, or that plaintiff be brought to trial in the county of his arrest, or that he be given the aid of counsel in that county. Further, defendants argue that even if such rights existed under Oklahoma law, plaintiff's complaint fails to assert a right cognizable under Section 1983 of Title 42. Defendants further state that, even assuming plaintiff has alleged the violation of constitutionally protected rights, defendants are entitled to the defense of probable cause and the good faith belief that their behavior was proper. Section 1983 states that only defendants acting under "color of law" are suable. Officers of the States and their political subdivisions will generally be acting under color of law when they deprive individuals of rights


while fulfilling the tasks and obligations assigned to them, or made possible by the power conferred upon them by government.

Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961).

Personal participation is an essential allegation in a Section 1983 claim. Bennett v. Passie, 545 F.2d 1260, 1262 (10th Cir. 1976). Kite v. Kelley, 546 F.2d 334 (10th Cir. 1976). Since defendants were in no way responsible for the fact that plaintiff's trial was not held in Mayes County, the county of his arrest, nor for the deprivation of his alleged right to aid of counsel in the county of arrest, plaintiff has not stated a cause of action against these defendants under Title 42, Section 1983.

In fact, the latter allegation is contradicted by the uncontested affidavits herein. Defendants' motion for summary judgment as to Count III is hereby sustained.

It is so Ordered this 11th day of May, 1981.


H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT **FILED**
FOR THE NORTHERN DISTRICT OF OKLAHOMA **MAY 11 1981**

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CLAUDE B. HUNTON,)	
)	
Plaintiff,)	
)	
v.)	No. 80-C-212-E
)	
SOUTHWESTERN BELL TELE-)	
PHONE COMPANY,)	
)	
Defendant.)	

ORDER

Now on this 10th day of April, 1981, this matter is before the Court as scheduled for pre-trial conference, and for consideration of the defendant's Motion to Dismiss and of plaintiff's counsel's Application for Withdrawal As Attorney. After conferring with counsel for both parties, the Court, being fully, advised finds no fault in plaintiff's counsel's failure to obtain answers to interrogatories and to thereby comply with the Court's Order; the Court finds that the terms of its Order were conveyed to plaintiff and that plaintiff wholly failed to cooperate in complying with Court's Order;

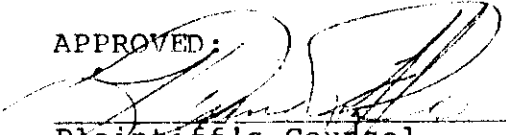
In addition, the Court finds that defendant's Motion to Dismiss was conveyed to plaintiff by his counsel, and plaintiff notified his counsel that his services were terminated, which action is the basis for plaintiff's counsel's Application for Withdrawal as attorney of record; the Court therefore, finds that the defendant's Motion to Dismiss for Failure to Comply with the Court's Order should be granted and that plaintiff's counsel should be allowed to withdraw.


IT IS THEREFORE ORDERED that defendant's Motion to Dismiss is hereby granted, and it is further ORDERED that Plaintiff's Application to Withdraw as Attorney of Record is also granted.

It is ordered this 11TH day of ~~April~~^{MAY}, 1981.


JAMES O. ELLISON
U. S. DISTRICT JUDGE

APPROVED:


Plaintiff's Counsel


Defendant's Counsel

4-27-81

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
MAY 11 1981

ROBERT CAZZELL,
Plaintiff,
vs.
RIVER PARKS AUTHORITY,
Defendant.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

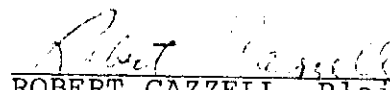
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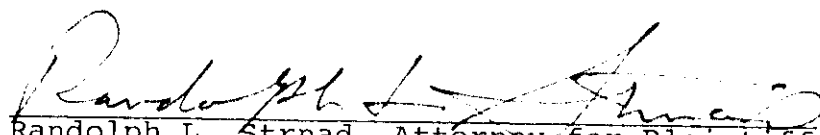
STIPULATION OF DISMISSAL

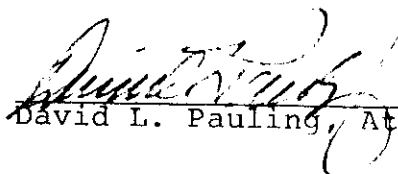
Plaintiff, ROBERT CAZZELL, hereby submits this Stipulation of Dismissal pursuant to Rule 41A(1) F.R.C.P. Plaintiff's action is dismissed with prejudice to the filing of a further action.

Defendant, RIVER PARKS AUTHORITY, as set forth in the Pre-Trial Order filed April 29, 1981 herein, waives its right to any reimbursement for costs or for attorney fees in this action.

APPROVED:


ROBERT CAZZELL, Plaintiff


Randolph L. Strnad, Attorney for Plaintiff


David L. Pauling, Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ROBERT C. ROE,

Plaintiff,

vs.

GENERAL AMERICAN LIFE
INSURANCE COMPANY and
PHILLIPS PETROLEUM COMPANY,

Defendants.

No. 78-C-571-C

FILED

MAY 11 1981


Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

The Court on May 11, 1981, filed its Findings of Fact and Conclusions of Law which are hereby incorporated herein and made a part of its Judgment.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Judgment be entered in favor of the defendants Phillips Petroleum Company and General American Life Insurance Company as against the plaintiff Robert C. Roe on plaintiff's claims, and in favor of the defendant General American Life Insurance Company as against the plaintiff Robert C. Roe on General American's counterclaim in accordance with the Court's Findings of Fact and Conclusions of law.

It is so Ordered this 11 day of May, 1981.


H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

RICHARD L. HUDSON,

Plaintiff,

vs.

SWAN ENGINEERING AND
SUPPLY COMPANY,

Defendant.

No. 75-C-151-C

FILED

MAY 11 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

Now before the Court for its consideration is the defendant's motion for reconsideration, to alter and amend judgment and to amend findings, in regard to the Court's award of attorney fees to the plaintiff, and its application for a hearing on said motion.

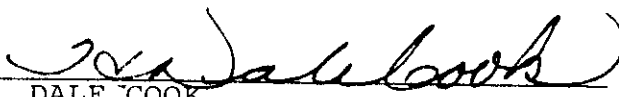
The defendant basically contends that the amount awarded was excessive. The Court awarded the plaintiff \$75,000 as attorney fees. Defendant states that the \$75,000 award, in addition to \$132,102.49 already paid plaintiff's counsel as a contingent fee, brings the total attorney fees to an amount in excess of ten times the amount testified to as reasonable compensation. Apparently, the defendant misunderstands that the \$75,000 is to be paid to the plaintiff, not to plaintiff's counsel.

The defendant also contends that the Court did not comply with the directives of State ex rel Burk v. City of Oklahoma City, 598 P.2d 659, 661 (Okla. 1979). This is not the case. While the Court did not specifically refer to the Burk case in making its ruling, it did refer to the later case of Oliver's Sports Center, Inc. v. Nat'l Standard Ins. Co., 615 P.2d 291 (Okla. 1980), which essentially reiterates the holding in Burk.

Obviously, there is no need for a hearing on defendant's motion.

For the foregoing reasons, it is therefore ordered that the motion of the defendant Swan Engineering and Supply Company for reconsideration, to alter and amend judgment and to amend findings is hereby overruled. It is further ordered that defendant's application for a hearing on said motion is hereby denied.

It is so Ordered this 17th day of May, 1981.


H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 8 1981

TELEX COMPUTER PRODUCTS, INC.)
and THE TELEX CORPORATION,)
)
Plaintiffs,)
)
v.)
)
MEMOREX CORPORATION,)
)
Defendant.)

Jack C. Silver, Clerk
U. S. DISTRICT COURT
No. 80-C-246-C

STIPULATION FOR DISMISSAL

The parties hereto, by and through their respective counsel of record, hereby stipulate and agree as follows:

1. On April 3, 1981 plaintiffs and defendant entered into a Settlement Agreement and Mutual Release (the "Release"), a copy of which is attached hereto as Exhibit "A".

2. This Court may enter an order, without further notice to the parties, dismissing plaintiffs' Complaint and claims for relief against defendant with prejudice, except as to those matters which the parties have specifically excluded from the Release (hereinafter the "Reserved Matters"). This Court may enter an order dismissing the Complaint as to the Reserved Matters without prejudice.

3. This Court may enter an order, without further notice to the parties, dismissing defendant's Counterclaim and claims for relief against plaintiffs with prejudice, except as to the Reserved Matters which may be dismissed by the Court without prejudice.

4. This stipulation is made by the parties hereto solely and for the purpose of compromising and settling the matters involved in this action, without the expense and inconvenience of trial, and it is expressly understood and agreed, as a condition hereof, that neither this stipulation nor the order of dismissal to be entered thereon, shall constitute or be construed to be

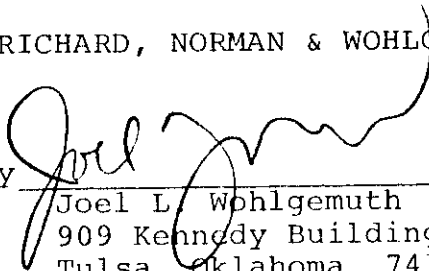
an admission or estoppel against any of the parties hereto or as evidencing or indicating in any degree an admission of the truth or correctness of the allegations in plaintiffs' Complaint or defendant's Answer and Counterclaim contained in whole or in part.

5. The order of dismissal should be allowed according to the terms of this stipulation, without any assessment of interest, costs, attorneys' fees, or other relief against the parties, each party to bear their costs herein expended.

DATED this 7th day of May, 1981.

PRICHARD, NORMAN & WOHLGEMUTH

By

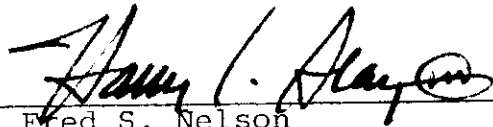

Joel L. Wohlgemuth
909 Kennedy Building
Tulsa, Oklahoma 74103

Attorneys for the plaintiffs,
The Telex Corporation and
Telex Computer Products, Inc.

Ronald S. Beard
Donald B. Ayer
GIBSON, DUNN & CRUTCHER
100 Park Center Plaza
San Jose, California 95113

HALL, ESTILL, HARDWICK, GABLE,
COLLINGSWORTH & NELSON, INC.

By


Fred S. Nelson
Harry L. Seay III
Clare E. Barrett
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172

Attorneys for the defendant,
Memorex Corporation

ORDER OF DISMISSAL

NOW on this 8th day of May, 1981, the Court has for its consideration Stipulation for Dismissal jointly filed in the above-styled and numbered cause by plaintiffs and defendant.

Based upon the representations and requests of the parties, as set forth in the foregoing Stipulation, the Court does hereby ORDER:

1. Plaintiffs' Complaint and claims for relief (except as to the Reserved Matters as described in the Stipulation) against the defendant, Memorex Corporation, should be and the same are hereby dismissed with prejudice.

2. Defendant's Counterclaim and claims for relief (except as to the Reserved Matters) against the plaintiffs should be and the same are hereby dismissed with prejudice.

3. The Complaint and counterclaim should be and the same are hereby dismissed, as to the Reserved Matters, without prejudice.

4. The foregoing dismissals are entered by the Court without any assessment of interest, costs, attorneys' fees or other relief against the parties, each party to bear its costs herein expended.

(Signed) H. Dale Cook

H. DALE COOK
Chief Judge, U.S. District Court

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this 3rd day of April, 1981, by and between Memorex Corporation, a California corporation ("Memorex"), The Telex Corporation, a Delaware corporation ("Telex"), and Telex Computer Products, Inc., an Oklahoma corporation ("TCP").

WHEREAS, heretofore and under date of December 31, 1977 Memorex, Telex and TCP together with certain wholly owned subsidiaries of TCP entered into a Purchase Agreement (the "Purchase Agreement") whereby Memorex agreed to purchase the common stock and assets of Telex and TCP, and,

WHEREAS, heretofore and under date of April 24, 1978 TCP and Memorex entered into an Option Agreement (the "Option Agreement") whereby TCP granted Memorex the option to purchase certain shares of a French company as is more specifically provided in the Option Agreement, and,

WHEREAS, heretofore and under date of December 29, 1978 Memorex, Telex and TCP together with certain wholly owned subsidiaries of TCP entered into Amendment No. 1 to Purchase Agreement (the "First Amendment"), and,

WHEREAS, heretofore and under date of April 1, 1979 Memorex, Telex and TCP together with certain wholly owned subsidiaries of TCP entered into Amendment No. 2 to Purchase Agreement (the "Second Amendment"), and,

EXHIBIT A

WHEREAS, thereafter and on May 1, 1980 Telex and TCP filed an action against Memorex in the United States District Court for the Northern District of Oklahoma No. 80-C-246-B (the "Proceeding"), and,

WHEREAS, thereafter and on June 30, 1980 Memorex filed in the Proceeding its Counterclaim (the "Counterclaim"), and,

WHEREAS, Memorex, Telex and TCP propose to amicably resolve the disputes and claims existing between Memorex on the one hand and Telex and TCP on the other hand with the exception of those claims which are covered and exempted from the operation of this Settlement Agreement as is more specifically provided hereafter.

NOW THEREFORE, in consideration of the mutual promises herein made and of the payments to be made by the parties to the other it is hereby agreed as follows:

1. On or before April 10, 1981 Memorex will wire transfer to TCP's Account No. 78-12655 at Continental Illinois National Bank and Trust Company of Chicago the sum of \$200,646.06 which shall be deemed in full satisfaction and payment of the installments of principal and interest due January 1, April 1, July 1, October 1, 1980 and January 1, 1981 on the Non-Negotiable Note issued by Memorex and the three Subsidiary Notes issued by the three subsidiaries of Memorex all of which were issued and delivered to TCP pursuant to Section 6.2 of the Second Amendment. Said amount of \$200,646.06 has been arrived at as follows:

- (a) Installments of principal and interest due TCP on the four Non-Negotiable Notes together with interest to April 10, 1981: \$1,319,948.19.

(b) To all extent of the liability of Memorex (X) Ltd. to (i) such claims as are specifically described in Sections 2 and 4 hereof and (ii) such claims as are hereinafter specifically received and accepted by Memorex together with interest to April 10, 1981: \$1,119,302.13.

(c) Balance due TCP on or before April 10, 1981: \$200,646.06.

2. Memorex shall pay to TCP on or before April 10, 1981 in the manner provided in Section 1 hereof the amounts due on April 1, 1981 on the Non Negotiable Notes as follows:

(i) U.S. \$186,123.28 (U. S.)

(ii) C.S.F. 148,010.56 (U. S.)

(iii) U. G. \$27,255.11 (U. S.)

(iv) Total of \$15,415.80 (U. S.)

plus interest on each of said amounts at 6% per annum in accordance with the terms of such Notes from April 1, 1981 to April 10, 1981 which amounts to \$400.21.

3. Memorex shall be solely responsible for the payment of all obligations, charges, fines and penalties assessed by the French Customs Authorities in connection with Parts I and II of the Proces Verbal No. 16 issued by the French Customs Authorities under date of April 25, 1979.

4. Telex and TCP shall be solely responsible for the payment of all obligations, charges, fines and penalties assessed by the French Customs Authorities in connection with the Proces Verbal No. 17 issued by the French Custom Authorities under date of April 25, 1979.

5. Memorex may, at its option, elect to apply the amount shown in Subsection 1 (b) as against the principal and interest due, after the payments in Section 2 hereof, on the Subsidiary

to the extent necessary to retire the Subordinated Note in full. In such event, Telex shall issue to TCP a new Non-Negotiable Note amortized over the remaining payment schedule and at the same interest rate in exchange for the Non-Negotiable Note dated April 1, 1979.

6. Attached hereto marked Exhibit A is a form of Mutual Release which each party shall execute and deliver in multiple counterparts to the other covering all claims now existing or arising in the future under the Purchase Agreement, the First Amendment and the Second Amendment except for matters contained in the other Sections hereof and the following matters which are specifically excluded from the operation of the Mutual Release:

- (a) Tax and customs claims, assessments and audits for periods prior to January 1, 1978.
- (b) Any capital tax assessed in the United Kingdom shall remain subject to the provisions of an agreement dated April 1, 1979 relating to the intercompany accounts.
- (c) The Negotiable Note and the Non-Negotiable Notes shall remain in effect according to their terms except as the Non-Negotiable Notes may be affected by the provisions of Sections 1, 2, and 5 hereof.
- (d) The Option Agreement shall remain in effect according to its terms.
- (e) Telex and TCP's claims for refunds of French taxes shall continue to be subject to the terms and provisions set forth in the letter of J. R. Bailey to Ronald S. Beard dated September 27, 1979.
- (f) The liability of Telex and TCP to satisfy the obligations to British Reserve Insurance Company claim including the attorneys' fees of Herbert Smith & Co.
- (g) The First Amendment and the Second Amendment shall remain in effect with respect to the Elimination Procedures as defined in Section 4 of the First Amendment and Section 3.5 of the Second Amendment until the Elimination Procedures have been completed.

7. Telex and TCP shall promptly dismiss the counterclaim and Complaint filed by them in the United States District Court for the Northern District of Oklahoma No. 80-C-246-B.

8. Memorex shall cause its counterclaim in the Proceeding to be dismissed with prejudice as to all matters therein claimed except such matters as are excluded under Section 6 hereof.

9. Memorex hereby disclaims any right to or claim against the deposit account of Telcompro S.A. in the Banque de l'Etat de Fribourg as well as any future or additional refunds from the Swiss Government deposited in such account or transmitted to Telex or TCP.

10. Of the settlement amount set forth in Section 1 (b) hereof, 715,740.77 FF represents an alleged French Bank Debt which Memorex claims should have been paid by Telex and TCP. Telex and TCP have agreed to pay such amount at this time only on the understanding and agreement that if Telex and TCP are able to prove at a later date but prior to June 30, 1981 that either (a) the assets involved with these loans from Bred Bank were not on the books of Telex Computers S.A. (France) on December 31, 1977 so that they were not included in the calculation of the purchase price or (b) such sum should not be deemed bank debt and an obligation of Telex and TCP under the Purchase Agreement, then Memorex will promptly refund that amount, or any other provable portion thereof, without interest, to TCP.

11. With regard to Subsection 6 (a) hereof, Memorex reaffirms that the liability of Telex and TCP thereunder is subject to prompt notification to Telex and TCP as to the nature of such claims,

proposed assessments, proposed audits and the Company will take no action in regard thereto unless after a reasonable period of time following such notice, Telex and TCP fail to pursue the claims, proposed assessments or proposed audits in which event, due to the failure of Telex and TCP to so pursue the matters about which it is notified, Memorex' rights to seek indemnification therefor shall not be impaired. Memorex agrees to make the books and records available to Telex and TCP for such audits and give reasonable assistance without charge.

12. At such time as Memorex loses the exclusive right to market any of TCP's products pursuant to the terms of the Equipment Supply Agreement dated January 20, 1978 between Memorex and TCP, Memorex shall be deemed to have relinquished the exclusive right to the use of the name "Telex" in connection with the marketing of such products.

13. This Settlement Agreement shall be construed under the laws of the State of California.

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed by their duly authorized officers as of the day and year first above written.

MEMOREX CORPORATION

By

[Signature]
Its President

THE TELEX CORPORATION

By

[Signature]
Its President



TELEX COMPUTER, PRODUCTS, INC.

By

[Signature]
Its President



WHENAS, E. Merck Corporation ("Merck"), The Telex Corporation ("Telex") and Telex Computer Products, Inc. ("TCP") have entered into a Settlement Agreement dated April 3, 1981.

NOW THEREFORE, in consideration of the mutual promises there-
in contained and in consideration of the mutual promises contained
herein, the parties agree as follows:

1. Telex and MCP, and each of them, fully and completely released all claims, demands, damages, actions, proceedings, causes of action, suits, judgments, decrees, orders, awards, settlements, compromises, arbitrations, negotiations, public or private, confidential and non-confidential, known or unknown, anticipated or unanticipated, existing and future, of every kind, known or unknown, arising out of or in connection with any of the contracts, promises, agreements, obligations, debts, liabilities and accounts set forth in any of the pleadings on file in the action entitled "Telex Computer Products, Inc., an Oklahoma corporation and The Telex Corporation, a Delaware corporation, Plaintiffs v. Bacomex Corporation, a California corporation, Defendant," and related counterclaim, No. 80-C-246-B in the United States District Court for the Northern District of Oklahoma, including without limitation any claims, demands, damages, actions, proceedings, causes of action of every kind, known or unknown, arising under the Purchase Agreement dated December 31, 1977, as amended (except as indicated in Section 7 below).

2. Memorex fully and completely releases and discharges Telex and TCP, and each of them, their officers, directors, employees, agents, servants, attorneys, affiliates, successors, predecessors, subsidiaries, parents and assigns of and from all claims, demands

... proceedings and causes of action of every kind, known or unknown, arising out of or in connection with any of the contracts, promises, representations, acts, omissions and occurrences alleged in any of the pleadings on file in the action entitled "Telex Computer Products, Inc., an Oklahoma corporation, and The Telex Corporation, a Delaware corporation, Plaintiffs v. Remorex Corporation, a California corporation, Defendant," and related counterclaim, No. 80-C-246 B in the United States District Court for the Northern District of Oklahoma, including without limitation any claims, demands, damages, actions, proceedings, causes of action of every kind, known or unknown, arising under the Purchase Agreement dated January 31, 1977, as amended (except as indicated in Section 7 below).

3. This Mutual Release specifically releases and extinguishes for all rights of each party hereto accruing through Section 1542 of the California Civil Code or under any comparable federal or state statute or rule of law. Said Section 1542 provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Each party hereto has executed this Mutual Release with full knowledge that he is forever releasing and extinguishing said rights.

4. Each party hereto fully understands that if any facts with respect to which this Mutual Release is executed be found to be other than true or different from the facts now believed by such party to be true, he expressly accepts and assumes the risk of such possible difference in facts and agrees that this Mutual Release

shall be and remain a collective notwithstanding any such difference in facts.

5. Each party hereto represents and warrants that he has not sold, assigned, conveyed or otherwise transferred, prior to the date of this Mutual Release, any claim or demand released hereby which he ever had or now has against any released party.

6. Liability for any and all claims is denied by each party hereto, and this Mutual Release shall never be treated as an admission of liability or responsibility at any time for any purpose or in any amount.

7. The undertakings, reservations and agreements made in the Settlement Agreement between the parties hereto under date of April 3, 1981, are not released hereby and expressly survive this Mutual Release.

8. The rights and obligations of the parties to the Equipment Supply Agreement dated January 20, 1978 are not released hereby and expressly survive this Mutual Release.

9. This Mutual Release may be signed in several counterparts which together shall constitute one agreement.

Dated: _____

MEMOREX CORPORATION

By _____
Its _____

Dated: April 7, 1981

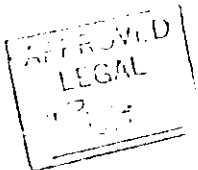
THE TELEX CORPORATION

By _____
Its President _____

Dated: April 7, 1981

TELEX COMPUTER PRODUCTS, INC.

By _____
Its President _____



IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

IVAN DON ELLIS,)
)
 Plaintiff,)
)
 vs.) No. 80-C-582-B
)
 TULSA POST OFFICE,)
 LEON T. ALEXANDER, Postmaster,)
 L.B.SMITH, Sectional Center)
 Director Mail Processing,)
 C.E.PITTS, Distribution)
 Manager, DONALD F. HARGY,)
 Employee and Labor Relations,)
)
 Defendants.)

FILED

MAY 8 1981

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

O R D E R

This action was instituted on October 8, 1980, by plaintiff, Ivan Don Ellis, pro se, against the Tulsa Post Office and various postal employees. The defendants have filed a Motion to Dismiss, or Alternatively for Summary Judgment. Plaintiff has now retained counsel and a responsive brief has been filed. At pre-trial hearing on May 5, 1981, counsel argued their respective positions and the Court took the Motion under advisement.

Plaintiff complains of his termination by the Postal Service on January 6, 1978, after employment for some 5 years as a Mail Handler. He alleges exhaustion of administrative remedies under the Collective Bargaining Agreement between the Postal Service and the National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders, AFL-CIO Union.^{1/} He seeks \$700,000.00 for the amount of salary he would have earned above the retirement he is now receiving [as of June 3, 1980] and \$60,000.00 for mental anguish as a result of an on-the-job injury, or in the alternative reinstatement and \$60,000.00 for mental anguish.

Plaintiff's counsel argues in the brief that although the case is based on the contract between the Union and the Postal Service it sounds in tort for the negligent, arbitrary and capricious firing of plaintiff. Counsel further argues the acts of

^{1/} Decision of Arbitrator rendered October 4, 1978. (Exhibit to defendants' brief)

the Postal Service in terminating plaintiff violated the collective bargaining contract between the Union and the Postal Service.

Defendants' Motion is predicated on four grounds:

- (i) The Complaint fails to state the grounds upon which the Court's jurisdiction depends;
- (ii) The Court lacks jurisdiction over the subject matter. F.R.Civ.P. 12(b)(1);
- (iii) An indispensable party to suit has not been joined as party plaintiff pursuant to F.R.Civ.P. 19. F.R.Civ.P.12(b)(7);
- (iv) The Complaint fails to state a claim upon which relief can be granted. F.R.Civ.P. 12 (b)(6)

Initially, the Court notes there are no jurisdictional allegations in the Complaint as filed. It is the general law that the federal courts are courts of limited jurisdiction, possessing only the power that Congress expressly conferred upon them by statute. Bowman v. White, 388 F.2d 756 (4th Cir. 1968) It follows, therefore, that a party who invokes a federal district court's jurisdiction for the first time must clearly show that his action is within the Court's jurisdiction. Jones v. Freeman, 400 F.2d 388 (8th Cir. 1968); Baltimore & O.R.Co., 197 F.2d 732, 743 (3rd Cir. 1952); Quality Beverage Co. v. Sun-Drop Sales Corp., of America, 291 F.Supp. 92 (Wis. 1968). The failure on the part of a plaintiff filing suit in a United States District Court to comply with F.R.Civ.P. 8(a)(1) showing affirmatively the existence of whatever is essential to jurisdiction, is sufficient for the court, on the defect being called to the Court's attention, to dismiss the case, unless it is cured by amendment. Miclau v. Miclau, 58 F.R.D. 207 (Puerto Rico 1972).

Although the activities of the Postal Service are expressly made subject to the Tort Claims Act [28 U.S.C. §2671 et seq; 28 U.S.C. §1346(b)] by 39 U.S.C. §409(c), it may not be sued directly; the claims must be asserted against the United States. Myers & Myers, Inc. v. United States Postal Service, 527 F.2d 1252 (2nd Cir. 1975); Neal v. United States Postal Service, 468 F.Supp. 958 (Utah 1979); Grasso v. United States Postal Service, 438 F.Supp. 1231, 1236 (Conn. 1977). Additionally,

there must be an exhaustion of the requirements of 28 U.S.C. §2675(a) and failure to exhaust defeats jurisdiction. Grasso v. United States Postal Service, supra at 1237.

Not only has plaintiff not shown an exhaustion of remedies pursuant to 28 U.S.C. §2675(a), he has not stated a cause of action under the Federal Tort Claims Act. His claim is for wrongful discharge and notwithstanding the phraseology plaintiff's counsel chooses to employ in the brief, his action is for breach of contract and not tort.

Effective July 1971 Congress established the new Postal Service, an independent establishment of the Executive Branch. 29 U.S.C. §201. It provided for two types of procedures for resolving labor disputes between the United States Postal Service and its employees. Veterans, also known as preference eligible employees, were given the choice of appealing an adverse decision to the Civil Service Commission [now Merit Systems Protection Board], 7 U.S.C. §7702, or invoking those procedures found in the applicable collective bargaining agreement. 39 U.S.C. §1005(a)(2) and §1206(b). 5 C.F.R. §752.203 provides that an employee may submit an appeal [to the Merit Systems Protection Board] at any time after receipt of the notice of adverse decision, but not later than 15 days after the adverse action has been effected. Nonpreference employees, on the other hand, were given recourse only to the process found in their contract. Abbruzzese v. Berzak, 601 F.2d 107, 108-109 (3rd Cir. 1979); Winston v. United States Postal Service, 585 F.2d 198 (7th Cir. 1978); Conrad v. United States Postal Service, 494 F.Supp. 761 (N. Car. 1980); Stritzi v. United States Postal Service, 602 F.2d 249 (10th Cir. 1979).

If plaintiff was a preference eligible employee, he had a right to ultimately appeal to the Merit Systems Protection Board. Judicial review of such appeals is expressly allowed. 5 U.S.C. §7703(a)(1), but only after the appeal has been completed. Conrad v. United States Postal Service, supra at 769; See e.g.

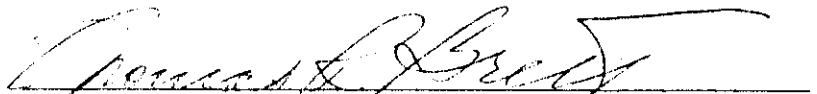
American Federation of Government Employees v. Acree, 475 F.2d 1289 (D.C. Cir.1973); Blackmar v. United States, 354 F.2d 340 (Ct.Cl.1965); Baskin v. TVA, 382 F.Supp. 641, 647 (M.D. Tenn. 1974), aff'd 519 F.2d 1402 (6th Cir. 1975). Plaintiff has not alleged exhaustion of this administrative remedy.

Plaintiff's grievance was heard before an arbitrator and a decision rendered. Plaintiff finds no fault with the decision other than to say the issue raised in this litigation is different from that submitted to the arbitrator. An arbitrator's award is final and binding upon the parties after procedures in accordance with the collective bargaining agreement. Humphrey v. Moore, 375 U.S. 335 (1964)

Furthermore, plaintiff has not alleged nor argued a breach of fair representation on the part of the Union.

IT IS, THEREFORE, ORDERED defendants' Motion to Dismiss is sustained for failure to state a claim under the Federal Tort Claims Act and lack of subject matter jurisdiction for failure to exhaust applicable administrative remedies.

ENTERED this 8th day of May, 1981.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA
TULSA DIVISION

FILED

MAY 1 - 1981

R. A. NAVE, NAVE OIL COMPANY
INC., AND JIM FROST,
Plaintiffs

vs.

SUNMARK INDUSTRIES, A DIVISIONS
OF SUN OIL COMPANY OF
PENNSYLVANIA,
Defendants

Civil Action No. 80-C-381-B

STIPULATION FOR DISMISSAL WITH PREJUDICE

It is hereby stipulated, pursuant to Rule 41 (a) of the Federal Rules of Civil Procedure, and subject only to the approval of the Court herein, that the above-styled and entitled action and all claims and causes of action of the Plaintiff herein be dismissed with prejudice, each party to bear his or her own costs and expenses incurred herein.

DATED this 5 day of May, 1981

JACK N. PRICE, P.C.
410 Congress Avenue
Second Floor
Austin, Texas 78701
512/474-1563

and

MR. THOMAS E. DRUMMOND
Drummond, Raymond, Payne
902 Utica Bank Tower
Tulsa, Oklahoma 94104
918/749-7378

By Jack N. Price
Jack N. Price
Attorneys for Plaintiff

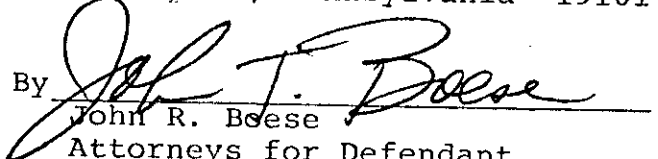
JOHN R. RICHARDS
Grigg, Richards & Paul
6 East 5th, Suite 200
Tulsa, Oklahoma 74103
918/584-2583

and

JOHN R. BOESE
Alden F. Abbott
FRIED, FRANK, HARRIS,
SHRIVER & KAMPELMAN
600 New Hampshire Avenue, N.W.
Washington, D.C. 20037
202/342-3500

and

FRANK R. ROARK, COUNSEL
Sunmark Industries
1845 Walnut Street
Philadelphia, Pennsylvania 19101

By 
John R. Beese
Attorneys for Defendant

ORDER OF DISMISSAL WITH PREJUDICE

This case came on before the Court upon the Stipulation of the parties for a voluntary dismissal of said cause with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure; and the Court being fully advised, it is:

ORDERED, that the above-styled and entitled action, and each of the claims and causes of action of the Plaintiff, be and the same is hereby dismissed with prejudice to the filing of a future action; and it is further:

ORDERED, that each of the parties bear his or her own costs and expenses incurred herein.

DATED, this 7th day of ^{may}~~April~~, 1981.

F I L E D

By: S/ THOMAS R. BRETT

MAY - 8 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

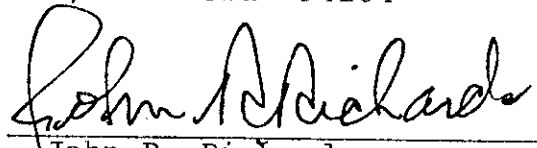
United States District Judge
for the U.S. District Court
for the Northern District
of Oklahoma

CERTIFICATE OF SERVICE

The undersigned certifies that on this 5th day of May, 1981, a true and correct copy of the above and foregoing STIPULATION FOR DISMISSAL WITH PREJUDICE and ORDER OF DISMISSAL WITH PREJUDICE (unsigned by the Court) was mailed to the following:

Jack N. Price, P.C.
410 Congress Avenue
Second Floor
Austin, Texas 78701

Mr. Thomas E. Drummond
Drummond, Raymond, Payne
902 Utica Bank Tower
Tulsa, Oklahoma 94104



John R. Richards

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 7 1981

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
DONNA J. STEED,)
)
Defendant.)

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 80-C-515-E

DEFAULT JUDGMENT

This matter comes on for consideration this 7TH
day of May, 1981, the Plaintiff appearing by Philard L. Rounds, Jr.,
Assistant United States Attorney for the Northern District of
Oklahoma, and the Defendant, Donna J. Steed, appearing not.

The Court being fully advised and having examined
the file herein finds that Defendant, Donna J. Steed, was personally
served with Summons and Complaint on February 3, 1981, and
that Defendant has failed to answer herein and that default
has been entered by the Clerk of this Court.

The Court further finds that the time within which
the Defendant could have answered or otherwise moved as to the
Complaint has expired, that the Defendant has not answered or
otherwise moved and that the time for the Defendant to answer
or otherwise move has not been extended, and that Plaintiff
is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that
the Plaintiff have and recover Judgment against Defendant,
Donna J. Steed, for the principal sum of \$970.00 plus the accrued
interest of \$263.40 as of June 27, 1980, plus interest at 7%
from June 27, 1980, until the date of Judgment, plus interest
at the legal rate on the principal sum of \$970.00 from the date
of Judgment until paid.

UNITED STATES OF AMERICA
HUBERT H. BRYANT
United States Attorney

P. L. Rounds Jr.
PHILARD L. ROUNDS, JR.
Assistant U. S. Attorney

James O. Deason
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
MAY 7 1981

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) No. 80-C-236-E
)
KAREN L. HART,)
)
Defendant.)

Jack C. Silver, Clerk
U. S. DISTRICT COURT

AGREED JUDGMENT

This matter comes on for consideration this 7th
day of May, 1981, the Plaintiff appearing by
Paula S. Ogg, Assistant United States Attorney for the
Northern District of Oklahoma and the Defendant, Karen L.
Hart, appearing pro se.


The Court being fully advised and having examined
the file herein finds that Defendant Karen L. Hart was
personally served with Summons and Complaint on May 7, 1980.

The parties agree and consent that judgment may be
entered against the Defendant, Karen L. Hart, in the amount
of \$1,238.75 plus interest from August 16, 1979, at the rate
of 7 percent per annum until date of Judgment, and thereafter
at the rate of 12 percent per annum until paid.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED
that the Plaintiff have and recover Judgment against Defendant,
Karen L. Hart, for the sum of \$1,238.75, plus interest from
August 16, 1979, at the rate of 7 percent per annum until
Judgment; thereafter said interest rate to be 12 percent per
annum until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
Defendant, Karen L. Hart, will make monthly installments be-
ginning May 15, 1981, at the rate of \$20.00 per month for the
first 6 months; \$50.00 per month for the second 6 months; and
\$75.00 per month thereafter until paid. Further that upon

James O. Ellison
UNITED STATES DISTRICT JUDGE


PAULA S. OGG
Assistant United States Attorney

- 2 -

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
vs.)
)
CASSANDRA L. WALTON,)
)
 Defendant.)

~~NOV~~ 7 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CIVIL ACTION NO. 81-C-13-E

DEFAULT JUDGMENT

This matter comes on for consideration this 7th
day of May, 1981, the Plaintiff appearing by Philard L. Rounds, Jr.,
Assistant United States Attorney for the Northern District of
Oklahoma, and the Defendant, Cassandra L. Walton, appearing
not.


The Court being fully advised and having examined
the file herein finds that Defendant, Cassandra L. Walton, was
personally served with Summons and Complaint on March 25, 1981,
and that Defendant has failed to answer herein and that default
has been entered by the Clerk of this Court.

The Court further finds that the time within which
the Defendant could have answered or otherwise moved as to the
Complaint has expired, that the Defendant has not answered or
otherwise moved and that the time for the Defendant to answer
or otherwise move has not been extended, and that Plaintiff
is entitled to Judgment as a matter of law.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that
the Plaintiff have and recover Judgment against Defendant,
Cassandra L. Walton, for the principal sum of \$1,825.00 plus
the accrued interest of \$466.78 as of November 30, 1980, plus
interest at 7% from November 30, 1980, until the date of Judgment,
plus interest at the legal rate on the principal sum of \$1,825.00
from the date of Judgment until paid.

S/ JAMES O. ELISON
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA
HUBERT H. BRYANT
United States Attorney


PHILARD L. ROUNDS, JR.
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
MAY 7 1981

PLANAGEMENT, INC., an
Oklahoma corporation,

Plaintiff,)

-vs-

AETNA CASUALTY AND SURETY
COMPANY, a Foreign corporation,

Defendant.)

No. 80-C-341-E

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

On this 7th day of May, 1981, upon joint application and stipulation of the parties, and by reason of settlement entered into, the above styled and number cause of action is herewith ordered dismissed with prejudice.

S/ JAMES O. ELLISON

JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SARAH AYRES,

Plaintiff,

vs.

UNITED STATES OF AMERICA,
Department of the Navy,

Defendant.

Civil Action No. 80-C-308-C

FILED

MAY 7 1981

FILED
J. S. DISTRICT COURT
ORDER OF DISMISSAL WITH PREJUDICE

NOW on this 7th day of May, 1981, the above styled cause comes on for hearing before the undersigned, Judge of the United States District Court in and for the Northern District of Oklahoma, upon the Stipulation of the plaintiff and defendant and the Court having examined the pleadings and being well and fully advised in the premises, is of the opinion that said Complaint should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the Complaint herein is dismissed with prejudice.

(Signed) H. Dale Cook
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 7 1981

JOHN R. RAKESTAW

Plaintiff,

vs.

EDGAR D. ALLEN AND JAMES L.
KELLY

Defendant.

NO. 80-C-661-E

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JOURNAL ENTRY OF DEFAULT JUDGMENT

NOW on this 7th day of May, 1981, this matter comes on before me, the undersigned Judge of the Federal District Court for the Northern District of Oklahoma, on Plaintiff's application for default judgment.

Upon reviewing the file herein, being fully advised in the premises and in consideration thereof, this Court finds that the Defendant Edgar D. Allen was duly served with summons on the 4th day of December, 1980, and the Defendant, James L. Kelly, was duly served with summons on the 26th day of November, 1980, and that the Defendants have failed, refused and neglected to plead, answer or otherwise appear in this action in the time allowed by law and are in default.

Further, it appears from the application and sworn affidavits on file that the sum of \$50,000.00 principal and \$99.68 costs is due and owing by the Defendants to the Plaintiff and that the Plaintiff should be awarded judgment by default for these amounts.

Further, as the prevailing party in this action and under Oklahoma Statutes Title 12 Section 936, Plaintiff is entitled to an attorney's fee in the amount of \$7,500.00, which this Court finds to be a reasonable amount.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff be and he is hereby awarded judgment against the Defendants and each of them in the amount of \$50,000.00 with interest at the rate of 12% per annum from the date of judgment until paid, \$7,500.00 as a reasonable attorney's fee, \$99.68 as cost expended and all additional costs to be incurred in this matter.

FOR ALL OF WHICH LET EXECUTION LIE.

S/ JAMES O. ELLISON

JUDGE OF THE FEDERAL DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BY

FEDERAL DISTRICT COURT CLERK
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DUKE WIER,

Plaintiff,

vs.

THOMAS L. SCHMIDT AND
INVESTORS NATIONAL CORPORATION,

Defendants and Third
Party Plaintiffs,

vs.

EDWARD BEVERLY AND
FINANCIAL SERVICES INTERNATIONAL,

Third Party Defendants,

and

DON McLANE and
INVESTMENT PRODUCT CONSULTANTS,
INCORPORATION,

Third Party Defendants.

FILED

MAY 17 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

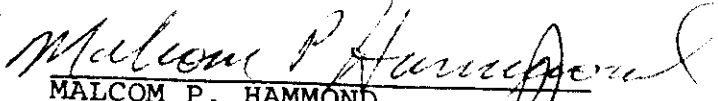
No. 80-C-329-B


ORDER OF DISMISSAL

Upon stipulation by both Plaintiff and Defendant in
the above entitled cause, It is therefore ORDERED, ADJUDGED
and DECREED by this Court that this cause be dismissed.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:


MALCOM P. HAMMOND
Attorney for Defendant, Thomas L. Schmidt


LESLIE S. HAUGER, JR.
Attorney for Plaintiff, Duke Wier

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CITIES SERVICE COMPANY,

Plaintiff,

v.

DEPARTMENT OF ENERGY, et al.

Defendants.

Civil Action No.
78-C-547-C

MAY 7 1981

STIPULATION OF DISMISSAL

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Plaintiff Cities Service Company ("Cities") and defendants
United States Department of Energy, et al., ("DOE"), hereby
stipulate as follows:

1. Cities and DOE entered into a Consent Order, a true copy of which is attached hereto as Exhibit A (the "Consent Order").
2. The Consent Order has become final and effective pursuant to law.
3. Paragraph 5 of the Consent Order provides in pertinent part:

In particular, DOE will terminate or withdraw all pending enforcement actions against Cities Service, including (but not limited to) the subpoena served upon Cities Service on or about December 13, 1977, and with the concurrence of the Department of Justice will move to dismiss United States v. Cities Service Company, Civil Action No. 79-0028 (D.D.C.). Concurrently with the filing of the aforementioned motion to dismiss Cities Service will file appropriate motions to dismiss in Cities Service Company v. Schlesinger, No. 78-550 (D. Del.), Cities Service Company v. DOE, Case No. 78-C-547-C (N.D. Okla.), and Amoco Production Co. et al. v. DOE et al., C.A. 3-79-1079-C (N.D. Tex.).

4. Pursuant to the terms of the Consent Order, and pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, Cities and DOE hereby stipulate to the dismissal of the above action with prejudice.

CITIES SERVICE COMPANY

By: [Signature]
Fulbright and Jaworski
1150 Connecticut Ave., N.W.
Washington, D.C. 20036

By: [Signature]
RUSSELL H. SMITH
GERALD H. BARNES
CHARLES M. FLOREN

Attorneys for Plaintiff

Dated: 4-6-81

UNITED STATES DEPARTMENT OF
ENERGY

By:

[Signature]
DON W. CROCKETT, Deputy Asst.
General Counsel
Department of Energy

THOMAS S. MARTIN
Acting Assistant Attorney General
United States Department of Justice

[Signature]
C. MAX VASSANELLI
Attorney
Department of Justice
Washington, D.C. 20530

Attorneys for Defendants

Dated: May 1, 1981

THIS 7th day of May, 1981, the foregoing
Stipulation is approved, and

IT IS SO ORDERED.

[Signature]
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY - 5 1981

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
vs.)
)
RED BALL, INC.,)
)
Defendant,)

U.S. DISTRICT COURT

CIVIL ACTION NO.

79-C-571-E

ORDER OF DISMISSAL

The undersigned Judge, having reviewed the Settlement Agreement agreed to by the parties and the joint Motion to Dismiss, wherein the parties agreed that the captioned case should be dismissed with prejudice, each party to bear its own costs, does hereby order that the above captioned action be dismissed with prejudice against either party for refileing a future action based upon any other facts and circumstances, and issues pertaining hereto, and further orders that each party shall bear its own costs.

87 JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHEAST DISTRICT OF OKLAHOMA

FILED

MAY - 5 1981

VEBA ECK,

Plaintiff,

vs.

CLYDE L. ECK,

Defendant.

Case No. 10-CV-12-11

ORDER OF DISMISSAL

CORAM now before me the undersigned Judge the Application of Plaintiff to dismiss this cause with prejudice. On review of the same, this Court finds that the parties have settled their dispute and that this action should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the above styled and numbered cause be dismissed with prejudice to the right bringing any other future action.

S/ JAMES O. ELLISON

Judge of the District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAY - 5 1981

GOULD-BROWN BOVERI, a
general partnership,

Plaintiff,

v.

LOCAL UNION 584, INTERNATIONAL
BROTHERHOOD OF ELECTRICAL
WORKERS, AFL-CIO, a Labor
Organization, ROBERT SMITH and
DAVID KEENER, Individuals,

Defendants.

NO. 80-C-153-E

JUDGMENT

The matter having come before the Court on Defendants' Motion for Summary Judgment and Plaintiff's Cross-Motion for Summary Judgment, by Order entered March 9, 1981, Defendant's Motion for Summary Judgment was overruled and Plaintiff's Cross-Motion for Summary Judgment was sustained.

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff have judgment against Defendants vacating and holding null and void the Arbitration Opinion and Award of Preston J. Moore, Arbitrator, dated November 15, 1979, In the Matter of the Arbitration between Gould-Brown Boveri and International Brotherhood of Electrical Workers, Local No. 584, FMCS No. 79K23143 (Grievants Richard Smith and David Keener), and that Plaintiff recover its costs.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MID-STATE HOMES, INC.

Plaintiff,

vs.

HOMEOWNERS FINANCIAL SERVICES
OF OKLAHOMA, INC.,

Defendant.

No. 80-C-718-E

JOINT APPLICATION TO DISMISS


Comes now the Plaintiff and the Defendant and makes Application to the Court jointly to dismiss with prejudice the above-entitled cause for reason that the same has been settled between the parties.

Dated this _____ day of _____, 1981.

LAWRENCE A. JOHNSON
ATTORNEY FOR PLAINTIFF

JOHN E. BEAVEN
ATTORNEY FOR DEFENDANT

Lawrence A. Johnson
1732 East 30th Place
Tulsa, Oklahoma 74114
(918) 743-3012


John E. Beaven
401 First Life Assurance Bldg.
Oklahoma City, Oklahoma 73102
(405) 239-7577

O R D E R

Upon Joint Application duly made, the Court finds and orders that the above-entitled cause be and the same is hereby dismissed with prejudice.

Dated this 4th day of May, 1981.

S/ JAMES O. ELLISON

U.S. DISTRICT JUDGE

FILED

MAY - 5 1981

Jack A. Brown
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FIRST NATIONAL BANK IN FREDONIA,)
KANSAS,)
)
Plaintiff,)
)
vs.)
)
PLAZA NATIONAL BANK OF)
BARTLESVILLE, OKLAHOMA,)
)
Defendant.)

No. 80-C-310-B

MAY 4 1981

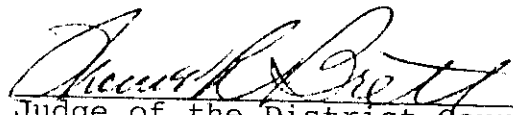
U.S. District Court
U.S. District Court

JUDGMENT

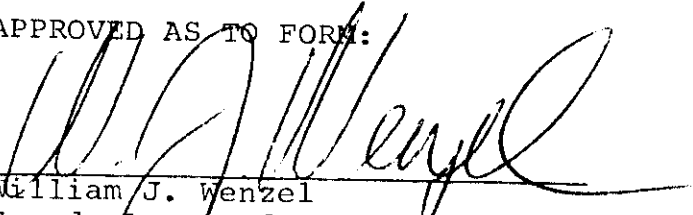
Now, on this 4th day of May, 1981, there comes on for hearing the instant matter. The Plaintiff is present in person and as represented by its counsel, William J. Wenzel of the firm of Sneed, Lang, Adams, Hamilton, Downey & Barnett. The Defendant is present in person and as represented by its attorney, Christopher L. Coyle of the firm of Houston and Klein, Inc. And the Court, after being fully advised in the premises, finds the issues in favor of the Plaintiff herein, as set forth hereinafter.

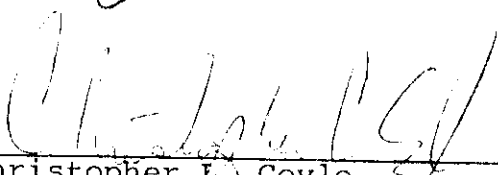
This Court finds that the Plaza National Bank was not entitled to apply the proceeds of the March 26, 1979, sale of the livestock and miscellaneous equipment of Ron Patton d/b/a 5 U Rodeo Company to that indebtedness incurred by Linda Patton with the Plaza National Bank in the total sum of \$4,539.58.

IT IS, THEREFORE, HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff herein have judgment against the Defendant, Plaza National Bank of Bartlesville, Oklahoma, in the sum of \$4,539.58, together with interest on this sum at the rate of 12% per annum.


Judge of the District Court

APPROVED AS TO FORM:


William J. Wenzel
Sneed, Lang, Admas, Hamilton,
Downey & Barnett
Attorneys for the Plaintiff


Christopher E. Coyle
Houston and Klein, Inc.
Attorneys for the Defendant

MAY 4 1981

Jack G. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JIMMY T. SMITH and SHIRLEY SMITH)	
)	
Plaintiffs,)	
)	
vs.)	678
)	80-C- 48 -B
)	
PIONEER LIFE INSURANCE COMPANY OF)	
ILLINOIS, a corporation)	
)	
Defendant.)	

O R D E R

It appears to the court that the above entitled action has been fully settled, adjusted and compromised and based on stipulation; therefore,

IT IS ORDERED AND ADJUDGED that the above entitled action be and it is hereby dismissed without cost to any party and with prejudice to all the parties.

DATED this 4th day of April, 1981.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PARK PLAZA SHOPPING CENTER,
a California limited partnership,

Plaintiff,

vs.

ANDERSON DEVELOPMENT CO., an
Oklahoma corporation,

Defendant.

No. 80-C-618-B

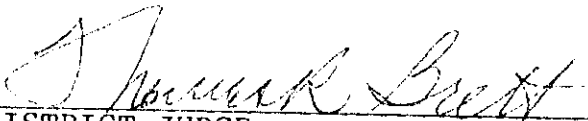
F I L E D

MAY - 4 1981

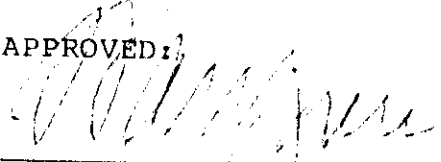
ORDER OF DISMISSAL

On the joint motion of the plaintiff and the defendant the within action by the plaintiff and the Complaint of the plaintiff are dismissed with prejudice to the bringing of another action upon the same cause or causes of action sued upon herein by the plaintiff and the defendant's Counterclaim against the plaintiff is dismissed without prejudice to the bringing of another action upon the promissory note and real estate mortgage which are the basis of the defendant's Counterclaim against the plaintiff.

Entered this 4th day of May, 1981.


DISTRICT JUDGE

APPROVED:


Attorney for Plaintiff.


Attorney for Defendant.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Fred J. Popp and Ann Popp,
husband and wife,

Plaintiffs,

vs.

Greyhound Lines, Inc., a foreign
corporation, and MFA Mutual
Insurance Company, a foreign
corporation,

Defendants.

No. 80-C-211-B ✓

FILED

MAY 4 1981 *hmc*

Jack G. Silver, Clerk
U. S. DISTRICT COURT

ORDER

And now on this 4 day of May, 1981, there came on for consideration before the undersigned Judge of the United States District Court for the Northern District of Oklahoma, stipulation of the parties hereto of dismissal, parties hereto having advised the Court that all disputes between the parties have been settled.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above-styled cause be and the same is hereby dismissed with prejudice to the right of the Plaintiff to bring any future action arising from said cause of action.



Judge Thomas R. Brett

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MELVIN W. McDONALD,

Plaintiff,

vs.

T.I.M.E.-D.C., INC.,

Defendant.

No. 80-C-133-BT

FILED

MAY 4 1981

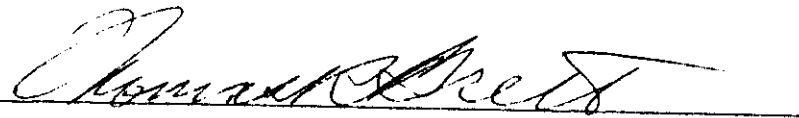
Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law filed simultaneously herewith, Judgment is hereby entered for the plaintiff and against the defendant in the amount of \$6,675.00, with interest at the rate of 6% from April 1, 1979, to October 1, 1979, and at 10% to the date of judgment and at the rate of 12% from the date of judgment until paid.

The plaintiff is to recover from the defendant his proper costs herein, excluding any attorney's fees.

ENTERED this 4th day of May, 1981.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 1 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

NELLIE ATKINS ARMSTRONG,

Plaintiff,

vs.

MAPLE LEAF APARTMENTS, LTD.,
et al.,

Defendants.

No. 74-C-119

ORDER DISMISSING, WITHOUT PREJUDICE,
CROSS-CLAIM OF SACKMAN-GILLILAND CORPORATION

Upon motion of the defendant, Sackman-Gilliland Corporation,
it is hereby ordered that its cross-claim against defendants
Broken Arrow's Mall, Inc., and H. Harold Becko, and plaintiff,
Nellie Atkins Armstrong, be dismissed, without prejudice to
any further action.

(Signed) H. Dale Cook

H. DALE COOK,
UNITED STATES DISTRICT JUDGE

APPROVED:

Royce H. Savage
900 World Building
Tulsa, Oklahoma 74103

Attorney for the defendant,
Sackman-Gilliland Corporation

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WOOD PROTECTION COMPANY, a)
Georgia corporation,)

Plaintiff,)

vs.)

NO. 80-C-267-C

CHESTER L. BROOKS d/b/a Direct)
Lumber Sales Company,)

Defendant.)

FILED

MAY - 1 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

This matter having come on to be heard upon request to the Clerk to Enter Default filed herein by the plaintiff, Wood Protection Co., the Court finds that the defendant, after good and valid service of the complaint and summons has wholly failed to plead or otherwise and is, therefore, in default and the plaintiff is entitled to Default Judgment as prayed for in his Complaint.

It is, therefore, Ordered, Adjudged and Decreed that the plaintiff Wood Protection Company is entitled to judgment against the defendant, Chester L. Brooks d/b/a Direct Lumber Sales Company in the amount of \$16,942.72 with interest at the rate of 12% until paid, an attorney fee in the amount of \$ 1700⁰⁰, Court costs, and all other relief which the Court deems necessary and equitable.

(Signed) H. Dale Cook

Judge